

1 D. EDWARD HAYS, #162507  
ehays@marshackhays.com  
2 TINHO MANG, #322146  
tmang@marshackhays.com  
3 MARSHACK HAYS LLP  
870 Roosevelt  
4 Irvine, California 92620  
Telephone: (949) 333-7777  
5 Facsimile: (949) 333-7778

6 Attorneys for Chapter 7 Trustee,  
RICHARD A. MARSHACK

7 UNITED STATES BANKRUPTCY COURT

8 CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION

9 In re

10 NORTHERN HOLDING, LLC,

11 Debtor.

Case No. 8:20-bk-13014-ES

Chapter 7

CHAPTER 7 TRUSTEE’S MOTION TO  
AUTHORIZE CASH DISBURSEMENTS  
PURSUANT TO COURT-APPROVED  
STIPULATION FOR SUBORDINATION  
RE SALE PROCEEDS OF 2380 LIVE  
OAK ROAD, PASO ROBLES, CA;  
DECLARATION OF RICHARD A.  
MARSHACK; AND REQUEST FOR  
JUDICIAL NOTICE

16 Date: May 5, 2022

17 Time: 10:30 a.m.

18 Ctrm: 5A<sup>1</sup>

Location: United States Bankruptcy Court  
411 West Fourth Street  
Santa Ana, CA 92701-4593

20 TO THE HONORABLE ERITHE A. SMITH, UNITED STATES BANKRUPTCY JUDGE, THE  
21 OFFICE OF THE UNITED STATES TRUSTEE, AND ALL INTERESTED PARTIES:

22 Richard A. Marshack, the duly appointed and acting chapter 7 trustee (“Trustee”) for the  
23 bankruptcy estate (“Estate”) of Northern Holding, LLC (“Debtor”), files this motion for order  
24 authorizing the interim distribution of funds derived from the sale of real property commonly known  
25 as 2380 Live Oak Road, Paso Robles, CA (“Live Oak Property” or “Property”) pursuant to 11  
26 U.S.C. § 363. In support of this Motion, Trustee represents as follows:

27 \_\_\_\_\_  
28 <sup>1</sup> Hearing via ZoomGov.

1 **1. Summary of Argument**

2 In a chapter 7 case, dividends to creditors shall be paid as promptly as practicable. In this  
3 case, after closing the sale of the Live Oak Property, Trustee made distributions of over \$8 million to  
4 creditors and held the remainder of certain funds in reserve pursuant to an agreement with secured  
5 creditor, Farm Credit West, FCLA (“FCW”). FCW has already agreed in writing to the payment of  
6 certain items from the monies being held in the Estate’s bank account including significant  
7 administrative fee reserves. By this motion, Trustee seeks entry of an order authorizing interim  
8 distributions from these administrative reserves to administrative creditors including interim  
9 compensation to Trustee and his retained professionals. Good cause exists to authorize these interim  
10 distributions to minimize ordinary-course bank fees which would unnecessarily deplete the Estate to  
11 the detriment of non-administrative creditors. Concurrently with this Motion, Estate professionals  
12 will be seeking approval of interim compensation. Due to the complexity of the case, the nature of  
13 the assets to be sold, and the various competing interests in the properties, Trustee’s counsel has had  
14 to be very actively involved with the case, the firm’s bills to date exceed \$277,000 in fees and  
15 \$13,729 in costs. Additionally, Trustee and his administrator have collectively logged over 330  
16 hours in connection with this case, with Trustee accounting for over 259 of such hours. By this  
17 Motion, Trustee seeks only a partial payment of the accrued and owed administrative expenses from  
18 the specifically subordinated and segregated administrative expense reserve set up pursuant to the  
19 “carve-out” agreement with FCW and approved by the Court

20 **2. Factual Background**

21 **A. Pre-Petition**

22 Erich Russell was the former owner and operator of Rabbit Ridge Winery (“Rabbit Ridge”),  
23 which was as of October 2020 located at 1172 San Marcos Road, Paso Robles, CA (“San Marcos  
24 Property”). To finance his business operations, Mr. Russell borrowed substantial sums of money  
25 from Farm Credit West, FLCA (“FCW”), which loans were secured certain assets including  
26 substantially all assets of Rabbit Ridge and Properties.<sup>2</sup>

27 \_\_\_\_\_  
28 <sup>2</sup> In additional to the Live Oak Property, Debtor is the title owner of real property, located at 1172 San Marcos  
Road, Paso Robles, CA (“San Marcos Property”), which includes a turnkey winery production facility and

1 On or about October 28, 2020, Mr. Russell signed quitclaim deeds transferring the Properties  
2 to Debtor. These quitclaim deeds were recorded on the same date. Additionally, ownership and  
3 control of Rabbit Ridge passed to LeRoy Codding (“Mr. Codding”).

4 **B. The Bankruptcy Case**

5 On October 28, 2020 (“Petition Date”), Northern Holding, LLC, a Minnesota limited liability  
6 company (previously defined as “Debtor”) filed a voluntary petition under Chapter 11 of Title 11 of  
7 the United States Code. Debtor’s managing member was Mr. Codding.

8 On October 29, 2020, as Dk. No. 5, FCW filed a notice of continuation of perfection of  
9 security interest and demand to sequester cash collateral.

10 On November 6, 2020, as Dk. No. 11, FCW filed a motion for relief from the automatic stay  
11 regarding the Live Oak Property and Debtor’s other two properties (which are not relevant for this  
12 motion). In short, FCW has a blanket lien in the approximate amount of \$19-20 million over all  
13 assets of Debtor including the Properties.

14 On June 15, 2021, the case was converted to Chapter 7. Richard A. Marshack was appointed  
15 as the Chapter 7 trustee.

16 On July 28, 2021, as Dk. No. 159, Trustee filed a notice of assets. The Court set a claims bar  
17 date of November 1, 2021 (“Bar Date”). By the Bar Date, only eight proofs of claim had been filed,  
18 and only one proof of claim was filed as a partial general unsecured claim – the claim by the  
19 Franchise Tax Board in the amount of \$10,297.92 (priority claim: \$3,529.47). Thus, the vast  
20 majority of the nearly \$30 million in claims are comprised of secured and administrative or priority  
21 unsecured claims.

22 On September 28, 2021, Trustee and Riboli Paso Robles, LLC (“Buyer”) executed a  
23 purchase and sale agreement (“PSA”) for those specified assets listed and described in Article I of  
24 the PSA (which includes, essentially, the Live Oak Property). Under the PSA, Buyer would  
25 continue conducting its due diligence which includes drilling exploratory water wells to determine  
26 the level of water at the Live Oak Property for future agricultural use. Due diligence for Buyer

27 \_\_\_\_\_  
28 real property identified as APN 027-145-022 in Paso Robles, CA (“Texas Road Property”). The Live Oak  
Property, San Marcos Property and Texas Road Property are collectively referred to as “Properties.”

1 continued with, among other things, exploratory well drilling (explained below).

2 On December 20, 2021, as Dk. No. 264, Trustee filed a motion to approve settlement and  
3 partial subordination agreement with FCW, where FCW consented to certain terms for the sale of the  
4 Live Oak Property and agreed to the payment of certain line-item expenses and compensation from  
5 proceeds of the Live Oak Property (“Compromise Motion”). A true and correct copy of the  
6 Compromise Motion is attached to the Request for Judicial Notice (“RJN”) as Exhibit “1.”

7 On January 14, 2022, as Dk. No. 276, the Court entered an order granting the Compromise  
8 Motion (“Compromise Order”). A true and correct copy of the Compromise Order is attached to the  
9 RJN as Exhibit “2.”

10 On January 31, 2022, as Dk. No. 284, Trustee filed a stipulation between himself and FCW  
11 regarding an additional stipulated line item out of the sale of the Live Oak Property for \$6,000 to  
12 Trustee’s professionals to explore a negotiation with San Luis Obispo County to reduce the tax  
13 liabilities owed on the San Marcos Property (“Tax Expense Stipulation”).

14 On February 14, 2022, as Dk. No. 286, the Court entered an order approving the Tax  
15 Expense Stipulation (“Tax Expense Order”). A true and correct copy of the Tax Expense Order is  
16 attached to the RJN as Exhibit “3.”

17 On February 24, 2022, upon the retirement of presiding judge Mark S. Wallace, the case was  
18 reassigned to the Honorable Erithe A. Smith.

19 **C. Due Diligence and Sale Motion**

20 On September 7, 2021, as Dk. No. 211, the Court entered an order approving the Operate  
21 Motion (“Operate Order”). The harvest period has now ended as of November 2021 and Trustee has  
22 been collecting crop proceeds.

23 On October 4, 2021, as Dk. No. 227, Trustee filed a motion for order authorizing water well  
24 drilling on property to allow Buyer to acquire water data (“Drilling Motion”).

25 On November 1, 2021, as Dk. No. 242, the Court entered an order granting the Drilling  
26 Motion (“Drilling Order”).

27 On January 19, 2022, as Dk. No. 278, Trustee filed a motion seeking authority to sell the  
28



1 Live Oak Property subject to overbid, with an initial bid price of \$9,100,000 (“Sale Motion”). The  
2 Sale Motion was not substantially opposed.

3 On February 9, 2022, the Court conducted a hearing on the Sale Motion. No overbidders  
4 appeared and Buyer was the prevailing bidder. The parties set forth on the record that the Sale  
5 Motion would be conditionally granted pending the continuing completion of Buyer’s due  
6 diligence, which had been unavoidably delayed due to circumstances outside of any party’s control.  
7 After the hearing on the Sale Motion, the parties engaged in negotiations regarding the form of the  
8 sale order and Buyer completed its due diligence.

9 On March 4, 2022, as Dk. No. 292, the Court entered an order granting the Sale Motion  
10 (“Sale Order”). A true and correct copy of the Sale Order is attached to the RJN as Exhibit “4.”  
11 Among other things, the Sale Order, paragraph 6 provided as follows:

- 12 e. Trustee is authorized to receive the reduced compensation equal to 2.25% of the  
13 purchase price out of escrow, to be held pending further order;
- 14 f. Trustee is authorized to receive \$100,000 out of escrow and hold such amount for  
15 the purpose of paying attorneys’ fees;
- 16 [...]
- 17 k. Pursuant to the Stipulation filed as Docket No. 284 and express consent by FCW,  
18 Trustee is further authorized to receive and hold \$6,000 for the purpose of paying  
19 attorneys’ fees for the initial investigation into reducing property tax liabilities for  
20 the San Marcos Property...

21 This Motion follows to authorize payment of the held funds, totaling \$310,750, to the interim  
22 payment of administrative expenses, divided as follows:

23 \$106,000 – Marshack Hays LLP (\$100,000 + \$6,000)

24 \$204,750 – Richard A. Marshack, Chapter 7 Trustee (2.25% of gross sale price)

25 On March 15, 2022, the sale of the Live Oak Property closed.

26 On March 18, 2022, as Dk. No. 299, Trustee filed a statement of property sold attaching the  
27 escrow closing statement for the Live Oak Property. A true and correct copy of the statement of  
28

property sold is attached to the RJN as Exhibit “5.”

#### **D. Post-Sale Allocation of Live Oak Proceeds**

The proceeds of the sale of the Live Oak Property were distributed as follows:

Description	Amount
Property Taxes (San Luis Obispo County)	\$67,972.66
Closing costs including transfer tax	\$26,717.45
Real Estate Commissions to Onyx (1.75%)	\$159,250
Real Estate Commission to Hilco (1.75%)	\$159,250
Farm Credit West, FCLA	\$8,312,289.11
ESTATE FUNDS ALLOCATED:	
Liability Insurance Reimbursement	\$6,770.78
Insurance Reserve	\$15,000
Miscellaneous Payment	\$30,000
Field Agent Fees	\$12,000
Trustee’s Compensation (@ 2.25%)	\$204,750
Attorneys’ Fees	\$106,000
ESTATE TOTAL	\$374,520.78

As shown in the table above, Trustee made direct disbursements totaling around \$8.7 million in connection with the sale of the Live Oak Property, and is holding \$374,520.78 pending further order of the Court. Specifically, Trustee is holding a segregated administrative reserve of \$310,750 (“Segregated Funds”) for payment of Trustee’s compensation and allowed attorneys’ fees, pursuant to the subordination “carve-out” agreement with FCW and approved by this Court.

#### **E. Farm Operations and Collections**

On August 9, 2021, as Dk. No. 186, Trustee filed a motion to approve a farm operator agreement and to authorize operations at the Properties for the limited purpose and scope of completing the Fall 2021 harvest with the assistance of a farm operator (“Operate Motion”). Under the agreement attached to the Operate Motion, the farm operator was to advance all costs of farming and seek reimbursement and compensation from the Estate after all proceeds had been paid to the Estate.

On September 7, 2021, as Dk. No. 211, the Court entered an order granting the Operate Motion and providing for a stipulated structure for distribution of cash collateral – all proceeds of grape crops were cash collateral of FCW.

By March 31, 2022, Trustee collected \$242,485.12 in gross proceeds from the sale of grape crops grown on the Properties. No further collections are anticipated.

On April 1, 2022, as Dk. No. 304, Trustee filed a motion for issuance of an order to show cause re: civil contempt against LeRoy Coddling (“Coddling”) for, *inter alia*, his diversion and direct receipt of crop proceeds constituting property of the Estate (“OSC Motion”).

### **3. Legal Argument**

“In a chapter 7 case, dividends to creditors shall be paid as promptly as practicable.” Fed. R. Bankr. Proc. 3009.

#### **A. Interim distributions may be authorized.**

“The determination of when an administrative expense is to be paid is within the discretion of the trial court.” *In re Verco Industries*, 20 B.R. 664, 665 (B.A.P. 9th Cir. 1982). “Courts take into account several factors in determining whether an administrative expense should be paid immediately: [1] the likelihood all administrative claims will be paid in full; [2] whether the administrative claimant could repay any payment that proves to be excessive; [3] the status of the case ...; [4] whether the expense was incurred in the ordinary course of the debtor’s business.” *In re GPLA, Inc.*, 2016 Bankr. LEXIS 3085 at \*6 (Bankr. C.D. Cal. August 22, 2016) (Kwan, J.) (quoting 3 March, Ahart, and Shapiro, *California Practice Guide: Bankruptcy*, ¶ 17:730).

Here, the Court ordered Trustee to hold certain specified sums pending a subsequent order of the Court, which sums were specifically reserved for the payment of Trustee’s Chapter 7 administrative expenses. First, Trustee was to receive and hold a sum equal to 2.25% of the gross purchase price of the Live Oak Property (\$9,100,000)<sup>4</sup> from the collateral proceeds from FCW – a sum of \$204,750. Second, Trustee was to receive and hold \$106,000 specifically designated for the

<sup>4</sup> Pursuant to 11 U.S.C. § 326, Trustee would be entitled to compensation of \$296,250 on distributions of \$9,100,000. The requested amount represents an approximate discount and reduction of \$90,000 from the statutory compensation amount and a significant concession by Trustee.

1 payment of Chapter 7 attorneys' fees. Because these sums were specially designated collateral  
2 distributions, they cannot be used for any purpose other than for the interim or final payment of  
3 administrative expenses. Because bank fees accrue on a monthly basis as a percentage of the total  
4 amounts held in the Estate's bank accounts, any further holding of these funds represents an  
5 unnecessary depletion of the Estate. There is good cause to authorize payment of these interim  
6 distributions of \$204,750 to the Trustee and \$106,000 to Trustee's attorneys Marshack Hays LLP,  
7 for the payment of interim compensation of approved attorneys' fees. Concurrent with this Motion,  
8 Trustee's counsel seeks approval of interim fees and expenses.

9 **B. Payments may be allowed on an interim basis.**

10 "A trustee, an examiner, a debtor's attorney, or any professional person employed under  
11 section 327 or 1103 of this title may apply to the court not more than once every 120 days after an  
12 order for relief in a case under this title, or more often if the court permits, for such compensation for  
13 services rendered before the date of such an application or reimbursement for expenses incurred  
14 before such date as is provided under section 330 of this title. After notice and a hearing, the court  
15 may allow and disburse to such applicant such compensation or reimbursement." 11 U.S.C. § 331.  
16 "[W]hen counsel must wait an extended period for payment, counsel is essentially compelled to  
17 finance the reorganization... a result that is clearly contrary to Congressional intent." *In re Knudsen*  
18 *Corp.*, 84 B.R. 668, 672 (B.A.P. 9th Cir. 1988); *see also In re Commercial Consortium of*  
19 *California*, 135 B.R. 120, 123 (Bankr. C.D. Cal. 1991). Four factors may be considered by the Court  
20 when determining whether to authorize interim compensation: "(1) The current availability of funds  
21 from which fees can be disbursed; (2) The existence and amount of other accrued administrative  
22 obligations of the same or higher priority that might exhaust available funds; (3) the continuing need  
23 for funds to pay the necessary administrative expenses likely to be incurred in completing the  
24 administration of the case; and (4) Inability to file a final fee application in the near future."  
25 *Commercial Consortium*, 135 B.R. at 124-25. Interim fee awards are subject to final approval.  
26 *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 858 (9th Cir. 2004).

1 By this Motion, Trustee seeks entry of an order authorizing the interim payment of  
2 administrative expenses. All four factors are satisfied for allowance of interim compensation.

3 **i. Funds are available and specifically earmarked for**  
4 **distribution.**

5 Pursuant the Compromise Motion and the Compromise Order, FCW agreed that \$106,000 in  
6 proceeds from the sale of the Live Oak Property would be subordinated to the Estate for the payment  
7 of Chapter 7 attorneys' fees, and 2.25% of the gross sale price (totaling \$204,750) would be  
8 subordinated to the Estate for the payment of Trustee's reduced compensation pursuant to 11 U.S.C.  
9 § 326. Thus, the first factor of funds available for distribution is satisfied – the funds in question are  
10 specifically earmarked for distribution to administrative creditors.

11 **ii. No other Chapter 7 administrative expenses may be paid from**  
12 **the administrative reserves.**

13 As for the second factor of the existence and amount of other accrued administrative  
14 obligations of the same or higher priority, and the third factor of the continuing need for funds to pay  
15 ongoing administrative expenses, both factors are satisfied here with the specific line item  
16 subordinations from proceeds of the Live Oak Property. There are no other administrative expenses  
17 of any priority which are allowed to be paid from the subordinated proceeds, and the Chapter 7  
18 administrative expenses are afforded a higher priority than the other allowed Chapter 11 priority  
19 administrative expenses of Debtor's former counsel and other expenses during the Chapter 11  
20 operational period. Furthermore, all property of the Estate appears to be encumbered by FCW's  
21 various blanket liens, and absent consent from FCW (or an avoidance action by Trustee),<sup>5</sup> no  
22 administrative expenses or other creditors may be paid.

23 **iii. A final fee application is not anticipated in the near future.**

24 Trustee continues to seek to sell the other properties including the San Marcos Property and  
25 the Texas Road Property, up until the time that FCW forecloses on such properties or they are  
26

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27 <sup>5</sup> No pre-petition avoidance actions are currently known to exist because Debtor received a day-of-bankruptcy  
28 transfer of all of its property, and Trustee understands that prior to the Petition Date, Debtor had no assets and  
no business activity.

1 formally abandoned. Additionally, Trustee is in the process of negotiating with the County of San  
2 Luis Obsipo regarding whether there is a basis for a stipulated avoidance of a portion of the  
3 County's \$3 million+ lien against the San Marcos Property. Finally, Trustee has filed an OSC  
4 Motion against Coddling and it is unknown whether the matter of Coddling's alleged contempt can be  
5 quickly resolved. It is therefore inequitable for professionals to have to wait for a final fee  
6 application in order to receive earned monies which FCW has consented to be paid from its  
7 collateral proceeds. All four factors weigh in favor of allowing interim payments at this time,  
8 provided that the Court concurrently allows professional fees on an interim basis pursuant to 11  
9 U.S.C. § 330. If the funds in the administrative reserve were not subject to the prior court-approved  
10 subordination agreement, Trustee would not need to file this Motion.

#### 11 **4. Conclusion**

12 Based on the foregoing, Trustee respectfully requests that the Court enter an order that  
13 provides that:

- 14 1. The Motion is granted;
- 15 2. Trustee may immediately disburse an interim payment of \$204,750 from the  
16 Segregated Funds as an interim distribution towards the Trustee's compensation pursuant to 11  
17 U.S.C. § 326;
- 18 3. Trustee may immediately disburse an interim payment of \$106,000 from the  
19 Segregated Funds as an interim distribution towards attorneys' fees, provided that such fees are  
20 approved on an interim basis by the Court; and
- 21 4. Such other and further relief as the Court may deem just and proper.

22  
23 DATED: April 6, 2022

MARSHACK HAYS LLP

24  
25 By: /s/ D. Edward Hays  
26 D. EDWARD HAYS  
27 TINHO MANG  
28 Attorneys for Chapter 7 Trustee,  
RICHARD A. MARSHACK

**Declaration of Richard A. Marshack**

I, RICHARD A. MARSHACK, declare as follows:

1. I am an individual over 18 years of age and competent to make this Declaration.

2. If called upon to do so, I could and would competently testify as to the facts set forth in this Declaration.

3. I am the duly appointed and acting chapter 7 trustee (“Trustee”) for the bankruptcy estates (“Estate”) of Northern Holding, LLC (“Debtor”).

4. Pursuant to the Court-approved stipulation for partial subordination of the lien held by Farm Credit West, FCLA (“FCW”) against property of the Estate, I effectuated the sale of real property commonly known as 2380 Live Oak Road, Paso Robles, CA (“Live Oak Property”) to Riboli Paso Robles, LLC for the price of \$9,100,000. An order approving the sale was entered on March 4, 2022.

5. In connection with the sale, I received out of escrow and am holding the following sums which were designated for the payment of administrative creditors: (1) \$204,750 representing a reduced 2.25% of the purchase price of the Live Oak Property for my statutory compensation under 11 U.S.C. § 326; and (2) \$106,000 representing a stipulated subordinated amount for payment of the Chapter 7 Estate’s attorneys’ fees in this case to my attorneys Marshack Hays LLP.

6. Because such funds constitute property of the Estate, I am obligated to pay banking fees on the entire amount held in Estate bank accounts. Rather than unnecessarily deplete the funds of the Estate with ordinary-course bank fees, it is in the best interest of the Estate to immediately make approved disbursements to professionals, especially because the funds were specifically subordinated by FCW and are designated with the consent of FCW to the payment of allowed professional fees only.

7. Due to the complex nature of the case and the unusual situation of the assets to be sold – over 450 acres of operational vineyards in Paso Robles with a medium-sized winery facility and a large residence – counsel has had to be very actively involved with most aspects of

1 this case upon my appointment as Chapter 7 trustee when the case was converted from Chapter  
2 11 to Chapter 7. I am informed that the outstanding accrued fees and costs for Marshack Hays  
3 LLP exceed \$277,000 in fees and \$13,000 in costs, and the requested payment of \$106,000 is  
4 only a partial payment of the accrued fees and costs.

5 8. Additionally, I have personally logged over 259 hours in the course of my  
6 administration of this case, including personally reviewing and negotiating crop purchase  
7 contracts, agreements for farming operations, and personally inspecting the properties in Paso  
8 Robles. Collectively, I and my administrator have logged over 330 hours in this case through the  
9 end of March 2022. Under 11 U.S.C. § 326, based on distributions of \$9,100,000 to creditors, I  
10 would be entitled to receive \$296,250 in compensation – the administrative reserve of \$204,750  
11 is therefore a significant reduction in compensation.

12  
13 I declare under penalty of perjury that the foregoing is true and correct. Executed on April 6,  
14 2022.



RICHARD A. MARSHACK



**REQUEST FOR JUDICIAL NOTICE**

Richard A. Marshack, in his capacity as Chapter 7 Trustee (“Trustee”) of the bankruptcy estate (“Estate”) of Northern Holding LLC (“Debtor”), through his attorneys Marshack Hays LLP, hereby requests pursuant to Federal Rule of Evidence 201, that this Court take judicial notice of the following documents to be considered in connection with this motion for order authorizing the interim distribution of funds derived from the sale of real property commonly known as 2380 Live Oak Road, Paso Robles, CA (“Live Oak Property” or “Property”) pursuant to 11 U.S.C. § 363.

	JUDICIALLY NOTICED DOCUMENTS
1.	Chapter 7 Trustee’s Motion to Approve Compromise and Subordination Agreement with Farm Credit West, FCLA Re: Distribution of Proceeds for Sale of Real Property Collateral, Waiver of Surcharge Claims for Consideration, filed on December 20, 2021, as Dk. No. 264.
2.	Order Granting Chapter 7 Trustee’s Motion to Approve Compromise and Subordination Agreement with Farm Credit West, FCLA Re: Distribution of Proceeds for Sale of Real Property Collateral, Waiver of Surcharge Claims for Consideration, filed on January 14, 2022, as Dk. No. 276.
3.	Order Approving Stipulation Between Chapter 7 Trustee and Secured Creditor Farm Credit West, FCLA re: Voluntary Subordination of Lien for Sale of 2380 Live Oak Road, Paso Robles, CA, filed on February 14, 2022, as Dk. No. 286.
4.	Order Granting Chapter 7 Trustee’ Motion for Order Authorizing Sale of Real Property Located at 2380 Live Oak Road, Paso Robles, CA, filed on March 4, 2022, as Dk. No. 292.
5.	Statement of Property Sold, filed on March 18, 2022, as Dk. No. 299.

DATED: April 5, 2022

MARSHACK HAYS LLP

/s/ D. Edward Hays

By: \_\_\_\_\_

KRISTINE A. THAGARD  
TINHO MANG  
Attorneys for Chapter 7 Trustee,  
RICHARD A. MARSHACK

EXHIBIT 1

1 KRISTINE A. THAGARD, #94401  
kthagard@marshackhays.com  
2 TINHO MANG, #322146  
tmang@marshackhays.com  
3 MARSHACK HAYS LLP  
870 Roosevelt  
4 Irvine, California 92620  
Telephone: (949) 333-7777  
5 Facsimile: (949) 333-7778

6 Attorneys for Chapter 7 Trustee,  
RICHARD A. MARSHACK  
7

8 UNITED STATES BANKRUPTCY COURT

9 CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION

10 In re  
11 NORTHERN HOLDING, LLC,  
12 Debtor.

Case No. 8:20-bk-13014-MW

Chapter 7

CHAPTER 7 TRUSTEE’S MOTION TO  
APPROVE COMPROMISE AND  
SUBORDINATION AGREEMENT WITH  
FARM CREDIT WEST, FCLA, RE:  
DISTRIBUTION OF PROCEEDS FOR  
SALE OF REAL PROPERTY  
COLLATERAL, WAIVER OF  
SURCHARGE CLAIMS FOR  
CONSIDERATION; MEMORANDUM OF  
POINTS AND AUTHORITIES;  
DECLARATION OF RICHARD A.  
MARSHACK IN SUPPORT

Date: January 10, 2022

Time: 2:00 p.m.

Ctrm: 6C

Location: United States Bankruptcy Court  
411 West Fourth Street  
Santa Ana, CA 92701-4593

23 TO THE HONORABLE MARK S. WALLACE, UNITED STATES BANKRUPTCY JUDGE, THE  
24 OFFICE OF THE UNITED STATES TRUSTEE, AND ALL INTERESTED PARTIES, ALL  
25 CREDITORS, AND/OR THEIR ATTORNEYS OF RECORD:

26 Richard A. Marshack, the duly appointed and acting chapter 7 trustee (“Trustee”) for the  
27 bankruptcy estate (“Estate”) of Northern Holding, LLC (“Debtor”), has entered into a proposed  
28

1 stipulation for subordination (“Agreement”) with Secured Creditor, Farm Credit West, FCLA  
2 (“FCW”) (Trustee and FCW are collectively referred to as the “Parties”). Trustee seeks court  
3 approval of the Agreement as being in the best interest of the estate. Pursuant to the Agreement,  
4 FCW is subordinating its lien on the Live Oak Property, Texas Road Property, and San Marcos  
5 Property (collectively “Properties”) solely with regard to a limited portion of its interest in the  
6 proceeds of the sale thereof (and not on any real property itself). Also, the Trustee exchanged  
7 consideration for a waiver of various claims including surcharge claims with FCW.

## 8 **1. Summary of Argument**

9 A bankruptcy court can approve settlements that are fair and equitable and in the best  
10 interests of the estate. In this case, substantially all property of the Estate appears to be encumbered  
11 by FCW’s security interest, and no sale is possible by the Trustee absent consent from FCW. After  
12 months of negotiations, FCW and the Trustee signed a stipulation containing terms for the consent of  
13 FCW to the sale of at least the Live Oak Property. Also, in order to simplify future potential  
14 situations, Trustee and FCW entered into a settlement regarding distributions and payments in the  
15 event that FCW forecloses on some or all of the real properties.

16 Approval of the Agreement will provide a benefit to creditors from administration of the  
17 Property where none would otherwise exist. This Court must decide whether to approve the  
18 Agreement a true and correct copy of which is attached to the Declaration of Richard A. Marshack  
19 (“Marshack Declaration”) as **Exhibit 1**.

## 20 **2. Factual Background**

### 21 **A. Pre-Petition**

22 Erich Russell was the former owner and operator of Rabbit Ridge Wine Sales, Inc. (“Rabbit  
23 Ridge”), which was as of October 2020 located at 1172 San Marcos Road, Paso Robles, CA (“San  
24 Marcos Property”). To finance his business operations, Mr. Russell borrowed substantial sums of  
25 money from Farm Credit West, FLCA (“FCW”), which were secured certain assets including  
26 substantially all assets of Rabbit Ridge and Properties.

1 On March 23, 2007, as document no. 2007-19418 in the County of San Luis Obispo, FCW  
2 recorded a deed of trust in the principal amount of \$17,500,000 against various properties owned by  
3 Erich Russell, including the San Marcos Property, adjacent farmland commonly known as the Texas  
4 Road Property, and residential real property located at 2380 Live Oak Road, Paso Robles, CA ("Live  
5 Oak Property").

6 Over time, Rabbit Ridge became less successful and Mr. Russell eventually filed an  
7 individual bankruptcy petition under Chapter 11, case number 9:20-bk-10035-DS. This bankruptcy  
8 case was dismissed for cause on June 4, 2020, pursuant to motion by the United States Trustee. The  
9 dismissal order included a 180-day bar to refiling.

10 A subsequent foreclosure sale for the Properties was scheduled by FCW for October 29,  
11 2020. Prior to the foreclosure date, Mr. Russell and FCW continued to discuss a possible forbearance  
12 and an extension of the foreclosure date.

13 On or about October 28, 2020, Mr. Russell signed quitclaim deeds transferring the Properties  
14 to Debtor. These quitclaim deeds were recorded on the same date. Additionally, ownership and  
15 control of Rabbit Ridge passed to LeRoy Coddling, who operated as a *de facto* chief restructuring  
16 officer. The new chief financial officer of Rabbit Ridge was Mr. Coddling's associate Steve Jones.

17 **B. Statement of Facts**

18 On October 28, 2020 ("Petition Date"), Debtor filed a voluntary petition under Chapter 11 of  
19 Title 11 of the United States Code.

20 On October 29, 2020, as Dk. No. 5, FCW filed a notice of continuation of perfection of  
21 security interest and demand to sequester cash collateral. No motion to use cash collateral was ever  
22 filed.

23 On November 6, 2020, as Dk. No. 11, FCW filed a motion for relief from the automatic stay  
24 regarding the Live Oak Property and Debtor's other two properties (not relevant for this motion). In  
25 short, FCW has a blanket lien in the approximate amount of \$19-20 million over all assets of Debtor  
26 including the Live Oak Property, while the estimated value of the Debtor's assets is well short of that  
27 amount. Additionally, the Trustee is informed that there may be a secured tax claim of  
28

1 approximately \$3.5 million secured by the San Marcos Property. As such, FCW may be an  
2 undersecured creditor.

3 On June 15, 2021, the case was converted to Chapter 7. Richard A. Marshack was appointed  
4 as the Chapter 7 trustee. On July 16, 2021, as Dk. No. 140, the Trustee filed an application to  
5 employ Onyx Asset Advisors, LLC (“Onyx”) jointly with Hilco Real Estate, LLC (“Hilco”) on  
6 modified employment terms to market and sell the Properties on behalf of the Estate (“Broker  
7 Employment Application”). On September 7, 2021, as Dk. No. 209, the Court entered an order  
8 approving the Broker Employment Application, except that the payment of compensation was not  
9 approved absent consent from FCW.

10 On August 9, 2021, as Dk. No. 186, the Trustee filed a motion seeking limited authority to  
11 operate the Properties for the sole purpose of completing the harvest for fall 2021, with Mr. Codding  
12 serving individually as the farm operator.

13 On August 26, 2021, as Dk. No. 201, Trustee and FCW filed a stipulation providing for  
14 certain terms for relief from the automatic stay.

15 On September 7, 2021, as Dk. No. 210, the Court entered an order granting relief from stay  
16 to FCW pursuant to the stipulated terms agreed to by Trustee and FCW. Importantly, the stipulated  
17 terms provided that no enforcement action would be taken against the Live Oak Property before  
18 December 1, 2021.

19 Also on September 7, 2021, as Dk. No. 211, the Court entered an order authorizing the  
20 Trustee to operate for a limited purpose (“Operate Order”).

21 On September 13, 2021, as Dk. No. 218, the Court entered an order compelling various  
22 parties (including Rabbit Ridge and the Russells, among others) to turn the Properties over to the  
23 sole control of the Trustee.

24 On September 28, 2021, Trustee and Buyer executed a purchase and sale agreement (“PSA”)  
25 for those specified assets listed and described in Article I of the PSA (which includes, essentially, the  
26 Live Oak Property). Under the PSA, Buyer would continue conducting its due diligence which  
27 includes drilling exploratory water wells to determine the level of water at the Live Oak Property for  
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1 future agricultural use. Under the PSA, Buyer submitted an initial bid (contingent on ongoing due  
2 diligence) to purchase the Live Oak Property for \$9,100,000, subject to overbid. Trustee filed a  
3 motion seeking approval of the bid procedures, which was approved in its entirety. On October 20,  
4 2021, as Dk. No. 238, the Court entered an order approving the overbid procedures in their entirety  
5 and setting a hearing for a sale of the Live Oak Property on December 13, 2021. Due to unforeseen  
6 logistical difficulties with the drilling company (discussed below), the timeline for sale was delayed  
7 to an anticipated January 2022 date instead of December 13.

8 On October 4, 2021, as Dk. No. 227, the Trustee filed a motion seeking authority to permit  
9 Miller Drilling Company to assist Buyer with its due diligence by drilling water wells on the Live  
10 Oak Property.

11 On October 31, 2021, Trustee's authorization to operate under the Court's Operate Order  
12 expired. After this date, no operations, including farming and wine processing (which was never  
13 authorized in the first place) were allowed at the Properties.

14 On November 1, 2021, as Dk. No. 242, the Court entered an order authorizing the water  
15 wells to be drilled. Subsequently, Miller Drilling informed the Buyer and the Trustee that due to  
16 prior commitments and a full schedule, it would be unable to commence drilling until late December  
17 or early January at the latest.

18 On December 9-10, 2021, Trustee's agent Lori Ensley visited the Properties and, with the  
19 assistance of FCW's representatives and a locksmith, fully re-keyed the Properties to prevent  
20 unauthorized entities or individuals from accessing the Properties. On those dates, Ms. Ensley  
21 discovered a crew of workers for Rabbit Ridge apparently using the San Marcos Property for  
22 unauthorized purposes. Trustee's investigation continues.

23 On December 10, 2021, FCW's representative signed a stipulation with the Trustee regarding  
24 the partial subordination of its lien pursuant to the terms set forth in the stipulation (previously  
25 defined as "Agreement"). A true and correct copy of the executed Agreement is attached to the  
26 Marshack Declaration as **Exhibit 1**.

27 Also on December 10, 2021, the Trustee transmitted a letter agreement to FCW regarding the  
28

1 clarification of certain terms. FCW's representative countersigned the letter agreement. A true and  
2 correct copy of the letter agreement is attached to the Marshack Declaration as **Exhibit 2**.

3 **3. Details of Compromise/Subordination Agreement**

4 FCW consents to the sale of the Live Oak Property consistent with the terms set forth in the  
5 Agreement, and consents to the sale of the Live Oak Property only, free and clear of its lien pursuant  
6 to 11 U.S.C. § 363(f)(2), provided that the Agreement is approved in its entirety (or, in the event of  
7 any modification by the Court, FCW accepts such modifications).

8 The following is a summary of the substantive terms of the Agreement.<sup>1</sup>

9 Generally, FCW consented to the Trustee's marketing of the Properties and consented to the  
10 Trustee's sale of the Live Oak Property provided that it would receive at least \$8,250,000 in  
11 proceeds from sale. FCW also agreed to the payment of various line items out of escrow to the  
12 Trustee, his professionals, and to pay various other expenses and claims of the Estate.

13 FCW consented in principle to the payment of certain line items out of escrow if the Trustee  
14 presented an acceptable offer for the sale of either the San Marcos Property or the Texas Road  
15 Property. However, FCW has not consented to the sale of either property.

16 Finally, the Trustee agreed, subject to approval of the Court, to provide a waiver of claims  
17 regarding the validity, priority, and extent of FCW's secured claim and also to waive any claim for  
18 surcharge against FCW. In exchange, FCW provided the partial subordination described in the  
19 Agreement and further agreed to provide a certain reimbursement of costs even if only some of the  
20 Properties were foreclosed by FCW. For example, paragraph 9 of the Agreement provides a structure  
21 of line item and lump sum payments to the Estate in the event that all three Properties are foreclosed  
22 by FCW and no sale occurs. On the other hand, paragraph 10 of the Agreement provides that in the  
23 event that some but not all of the Properties are sold by the Trustee, and FCW ultimately forecloses  
24 on the remaining Properties, the Estate will receive an allocation of \$30,000 per foreclosed property  
25  
26

27 <sup>1</sup> All interested parties are advised to consult the Agreement for all terms and conditions. The statements contained  
28 herein are a summary of the material terms and conditions only.



1 as a settlement of the surcharge issues (in addition to any disbursements out of escrow). As such, the  
2 Agreement provides a benefit to the Estate and avoids further litigation costs and uncertainties.

3 **4. Legal Argument**

4 “A subordination agreement is enforceable in a case under this title to the same extent that  
5 such agreement is enforceable under applicable nonbankruptcy law.” 11 U.S.C. § 510(a).

6 **A. Approval of the Agreement is in the best interest of the Estate.**

7 Under Rule 9019, the court may approve a compromise or settlement on motion by the  
8 trustee. Fed. R. Bankr. Proc. 9019. It is well-established that a compromise should be approved if it  
9 is “in the best interest of the estate . . . and is fair and equitable for the creditors.” *Schmitt v. Ulrich*  
10 (*In re Schmitt*), 215 B.R. 417, 424 (B.A.P. 9th Cir. 1997); *ATKN Company v. Guy F. Atkinson*  
11 *Company of California (In re Guy F. Atkinson Company)*, 242 B.R. 497, 502 (B.A.P. 9th Cir. 1999)  
12 (“At its base, the approval of a settlement turns on the question of whether the compromise is in the  
13 best interest of the estate.”) The standards to be applied to the approval of a settlement include:

- 14 1) the probability of success of the litigation on its merits;  
15 2) the difficulties in collection on a judgment;  
16 3) the complexity of the litigation involved; and  
17 4) the expense, inconvenience or delay occasioned by the litigation, and the interest of  
18 creditors.

19 *United States v. Edwards*, 595 F.3d 1004, 1012 (9th Cir. 2010) (quoting *In re A & C Properties*,  
20 784 F.2d 1377, 1380-81 (9th Cir. 1986), *cert. den. sub nom Martin v. Robinson*, 479 U.S. 854  
21 (1989)).

22 In this case, all of the *A&C* factors weigh in favor of approving the compromise. Under the  
23 Agreement, Trustee can resolve the dispute between the Parties, obtain a definite recovery for the  
24 Estate, eliminate administrative and litigation costs, and can move forward to administer the Estate’s  
25 assets for the benefit of the Debtor’s creditors. The only claims being compromised pursuant to the  
26 Agreement are claims regarding the validity of FCW’s secured claim and surcharge.

1 **i. Probability of success**

2 “The trustee may recover from property securing an allowed secured claim the reasonable,  
3 necessary costs and expenses of preserving, or disposing of, such property to the extent of any  
4 benefit to the holder of such claim, including the payment of all ad valorem property taxes with  
5 respect to the property.” 11 U.S.C. § 506(c). To prevail on surcharge, the trustee must show that his  
6 “expenses were reasonable, necessary, and provided a quantifiable benefit to the secured creditor.”  
7 *Debbie Reynolds Hotel & Casino, Inc. v. Calstar Corp. (In re Debbie Reynolds Hotel & Casino,*  
8 *Inc.)*, 255 F.3d 1061, 1068 (9th Cir. 2001). The trustee bears the burden of proof, and the analysis is  
9 not simple. *See USDA v. Hopper (In re Colusa Regional Medical Center)*, 604 B.R. 839, 853-58  
10 (B.A.P. 9th Cir. 2019).

11 Regarding the validity of FCW’s secured claim, the probability of success is low. Trustee  
12 knows of no dispute regarding the validity and perfection of FCW’s secured claim, which was  
13 recorded over 10 years ago. Also, regarding surcharge claims under 11 U.S.C. § 506(c), as cited  
14 above, the analysis is not simplistic to obtain surcharge. While the Trustee believes that substantially  
15 all of his administration of the Properties has directly benefited FCW, and all actions he has taken  
16 were to preserve and maintain the Properties constituting FCW’s collateral to the best of his ability,  
17 neither of the Parties wishes to litigate over the surcharge issues. The probability of success for the  
18 surcharge issues is highly uncertain, and this factor weighs strongly in favor of settlement rather than  
19 litigation.

20 **ii. Difficulties in collection**

21 The Trustee is informed that FCW is solvent and, in the event of litigation, there would not  
22 be a difficulty in collecting a money award against FCW. However, given the greatly uncertain  
23 likelihood of success and continued expense, convenience, and delay of further litigation, settlement  
24 is appropriate.

25 **iii. Complexity**

26 As discussed above, the only issue that might be litigated is the issue of surcharge. However,  
27 to obtain a full judicial determination of the issues surrounding surcharge, without the agreement by  
28

1 FCW that there was any benefit to FCW, the analysis would be unduly complex especially with  
2 regard to quantifying any benefit to FCW. Debtor apparently kept poor written records and to sort  
3 out the factual issues related to benefit would be complicated, and may involve reconstructing the  
4 history of the Properties at great expense to the Estate (and FCW). Rather than to litigate these  
5 issues, and sort out the complex question of quantifying the benefit to FCW by the Trustee's  
6 administration, the Parties agreed to settle.

7 **iv. Expense, inconvenience or delay**

8 Absent consent by FCW to the sale of any of the Properties, the Trustee could not sell any of  
9 the Properties, and would be forced to litigate just the issues of possible surcharge upon  
10 abandonment. *See In re KVN Corp.*, 514 B.R. 1, 6 (B.A.P. 9th Cir. 2014) ("sales of fully  
11 encumbered assets are generally improper... the trustee's proper function is to abandon the property,  
12 not administer it..."). And, in the event of litigation over the surcharge issues, there would be great  
13 administrative expense and delay in the administration of the case.

14 **B. The Subordination Provisions of the Agreement Provide Substantial**  
15 **Benefits to the Estate**

16 Trustee does not believe that the subordination provision set forth in the Agreement  
17 constitutes a "carve-out." Instead, the Agreement between the Parties effectuates a partial voluntary  
18 subordination of FCW's secured claim pursuant to the terms stated in the Agreement. To the extent  
19 the Court, however, determines that the subordination provisions of the agreement constitute a  
20 carve-out, the requirements for approval of such a carve-out are met here. The requirements for  
21 approval of a carve-out are: (1) whether the trustee "fulfilled his or her basic duties;" (2) whether  
22 there is "a benefit to the estate, i.e., prospects for a meaningful distribution to unsecured creditors;"  
23 (3) whether "the terms of the carve-out agreement been fully disclosed to the bankruptcy court." *See*  
24 *In re KVN Corp.*, 514 B.R. at 8.

25 First, the Trustee has fulfilled his basic duties. The Trustee's basic duty is to administer  
26 assets of the Estate, including maintaining the value of collateral and to liquidate any value available  
27 for the benefit of creditors utilizing the Bankruptcy Code. By entering into the Agreement, the  
28

Trustee is generating a significant return for unsecured creditors, including specific separate provisions for attorneys' fees, reduced professional fees in terms of broker and Trustee compensation, and a separate sum for the benefit of unsecured creditors.

Second, there is a benefit to the Estate by approval of the Agreement. The Estate will realize benefit primarily from the sale of the Properties and the collection of proceeds from the sale of grapes from the fall 2021 harvest, which are estimated to be a gross collection of approximately \$300,000 to \$400,000, with expenses to be determined. After payment of direct harvest expenses, the Trustee anticipates that there will be a substantial sum to be divided between the Estate and FCW pursuant to previously-approved terms for the division of such proceeds. By approval of the Agreement, the Estate will further realize a benefit from the sale of the Properties.

Finally, the full agreement has been attached to the Marshack Declaration. The terms have been fully disclosed to the Court.

## **5. Conclusion**

Because approval of the Agreement provides a sure benefit to the Estate when none would otherwise likely not exist, Trustee respectfully requests that this Court enter an order:

1. Granting the Motion;
2. Approving the Agreement attached as **Exhibit 1** to the Marshack Declaration;
3. Approving the letter agreement attached as **Exhibit 2** to the Marshack Declaration;
4. Authorizing the Trustee to execute the Agreement and implement its terms, including to distribute funds from a future sale of any of the Properties in accordance with the terms of the Agreement; and
5. For such other relief as the Court deems just and proper.

DATED: December 20, 2021

MARSHACK HAYS LLP

/s/ Tinhó Mang  
By: \_\_\_\_\_  
KRISTINE A. THAGARD  
TINHO MANG  
Attorneys for Chapter 7 Trustee,  
RICHARD A. MARSHACK

**Declaration of Richard A. Marshack**

I, RICHARD A. MARSHACK, declare as follows:

1. I am an individual over 18 years of age and competent to make this Declaration.

2. If called upon to do so, I could and would competently testify as to the facts set forth in this Declaration.

3. I am the duly appointed and acting chapter 7 trustee ("Trustee") for the bankruptcy estates ("Estate") of Northern Holding, LLC ("Debtor"), the title owner of real property commonly known as 2380 Live Oak Road, Paso Robles, CA ("Live Oak Property").

4. Since my appointment, I have been negotiating with Farm Credit West, FCLA ("FCW") regarding a consensual sale of the Debtor's real properties. It was only on December 10, 2021 that FCW's representative signed the settlement and subordination agreement, which went through months of revisions, including probably over one dozen versions of the agreement. Each term of the agreement was extensively negotiated.

5. A true and correct copy of the executed settlement and subordination agreement ("Agreement") is attached here as **Exhibit 1**.

6. I prepared a letter agreement on December 10, 2021 setting forth certain clarifications to the Agreement and explaining the factual developments subsequent to the drafting of the Agreement. FCW's representative countersigned the letter agreement, which is attached as **Exhibit 2**.

7. I have consulted with my counsel and considered the probability of success, the difficulties in collection, the complexity of any litigation, and the expense, inconvenience or delay occasioned with any litigation regarding the validity of FCW's secured claim and the issues regarding surcharge. Based on my investigation and familiarity with the issues, and the many hours I have spent attempting to negotiate this agreement, I believe in my business judgment that it is in the best interest of creditors for the Court to approve the Agreement and the letter agreement.

1           8.       I do not believe that the subordination provision set forth in the Agreement  
2 constitutes a "carve-out." However, to the extent the Court determines the provisions of the  
3 Agreement may be construed as a carve-out, the requirements for approval of a carve-out are met  
4 here, as set forth in the Motion.

5  
6           I declare under penalty of perjury that the foregoing is true and correct. Executed on  
7 December 20, 2021.

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RICHARD A. MARSHACK

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# EXHIBIT 1

1 D. EDWARD HAYS, #162507  
ehays@marshackhays.com  
2 DAVID A. WOOD, #272406  
dwood@marshackhays.com  
3 TINHO MANG, #322146  
tmang@marshackhays.com  
4 MARSHACK HAYS LLP  
870 Roosevelt Avenue  
5 Irvine, CA 92620  
Telephone: (949) 333-7777  
6 Facsimile: (949) 333-7778

7 Attorneys for Chapter 7 Trustee,  
RICHARD A. MARSHACK  
8

9 UNITED STATES BANKRUPTCY COURT  
10 CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION  
11

12 In re  
13 NORTHERN HOLDING, LLC,  
14 Debtor.  
15

Case No. 8:20-bk-13014-MW

Chapter 7

STIPULATION BETWEEN CHAPTER 7  
TRUSTEE AND SECURED CREDITOR  
FARM CREDIT WEST, FCLA RE:  
VOLUNTARY SUBORDINATION OF  
LIEN FOR SALE OF 2380 LIVE OAK  
ROAD, PASO ROBLES, CA

[HEARING TO BE SET]

16  
17  
18  
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21 TO THE HONORABLE MARK S. WALLACE, UNITED STATES BANKRUPTCY JUDGE, THE  
22 OFFICE OF THE UNITED STATES TRUSTEE, AND ALL INTERESTED PARTIES:

23 This stipulation is entered into between Richard A. Marshack, in his capacity as Chapter 7  
24 Trustee (“Trustee”) of the Bankruptcy Estate (“Estate”) of Northern Holding, LLC (“Debtor”), on  
25 one hand, and Farm Credit West, FCLA (“FCW”), on the other hand, with regard to the voluntary  
26 subordination of certain aspects of FCW’s lien to the extent and only under the conditions stated  
27 below. Collectively, the Trustee and FCW will be referred to as the “Parties.”  
28



**Recitals**

A. On March 23, 2007, as document no. 2007-19418 in the County of San Luis Obispo, FCW recorded a deed of trust in the principal amount of \$17,500,000 against various properties owned by Erich Russell, including the Live Oak Property (defined below).

B. On October 28, 2020, Debtor filed a voluntary petition for bankruptcy under Chapter 11 of Title 11 of the United States Code, initiating the above-captioned bankruptcy case. FCW is the senior secured lender holding a lien on substantially all assets of the Debtor.

C. On June 15, 2021, the case was converted to Chapter 7 and the Trustee was appointed as the Chapter 7 trustee for the Estate.

D. On August 26, 2021, as Dk. No. 201, Trustee filed a stipulation between him and FCW regarding stipulated relief from stay as to the Debtor's real properties effective as of December 1, 2021 ("Enforcement Date").

E. On September 7, 2021, as Dk. No. 210, the Court entered an order approving the stipulated terms for relief from stay as between Trustee and FCW ("Stay Relief Order"). The execution of this stipulation does not in and of itself satisfy the condition in paragraph 4 of the Stay Relief Order extending the Enforcement Date.

F. On September 28, 2021, Trustee signed a purchase and sale agreement ("PSA") with Riboli Paso Robles, LLC ("Buyer") regarding real property commonly known as 2380 Live Oak Road, Paso Robles, CA, and only to the extent of the rights being sold pursuant to the paragraph 1.1 of the PSA ("Live Oak Property").

G. Under the PSA, Buyer submitted an initial bid (contingent on ongoing due diligence) to purchase the Live Oak Property for \$9,100,000, subject to overbid. Trustee filed a motion seeking approval of the bid procedures, which was approved in its entirety. On October 20, 2021, as Dk. No. 238, the Court entered an order approving the overbid procedures in their entirety and setting a hearing for a sale of the Live Oak Property on December 13, 2021.

H. Trustee acknowledges that the Live Oak Property appears to be fully encumbered by FCW's deed of trust and has entered into this stipulation with FCW for the voluntary subordination of FCW's lien solely to the extent stated below. FCW enters into this stipulation to facilitate the sale

1 of the Live Oak Property and to avoid further litigation over the distribution of proceeds including  
2 any right of the Trustee pursuant to 11 U.S.C. § 506(c), regarding the other properties. This  
3 Stipulation shall not extend to any other property of the Estate other than that which is specifically  
4 identified herein.

5 The Parties agree and STIPULATE as follows:

6 1. FCW consents to the sale of the Live Oak Property consistent with the terms set forth  
7 below, and consents to the sale of the Live Oak Property **only**, free and clear of its lien pursuant to  
8 11 U.S.C. § 363(f)(2), provided that this Stipulation is approved in its entirety (or, in the event of  
9 any modification by the Court, FCW accepts such modifications). The approved legal description of  
10 the Live Oak Property for which FCW consents to sale is appended to this Stipulation as **Exhibit**  
11 **“1”** and incorporated by reference. By signing this stipulation, FCW does not consent to the sale of  
12 any other property.

13 2. Subject to its consent to sale, FCW agrees to voluntarily subordinate its lien on the  
14 Live Oak Property, Texas Road Property, and San Marcos Property (collectively “All Properties” or  
15 “the Properties” and as to the Texas Road Property and San Marcos Property (collectively “TS  
16 Adjoining Properties”) **solely with regard to a limited portion of its interest in the proceeds of**  
17 **the sale thereof** (and not on any real property itself), and solely to pay the following line items,  
18 unless otherwise noted:

19 a. As to Live Oak Property from the Live Oak Property sale proceeds: All  
20 reasonable closing costs for the sale of the Live Oak Property, which include  
21 and are estimated as follows: settlement fee (est. \$500), title search fees (est.  
22 \$250), escrow fees (est. \$9,000), title insurance (est. \$20,000), and county  
23 transfer taxes (calculated at \$1.10 per \$1000 of gross purchase price), which  
24 shall be pro-rated and allocated between buyer and seller pursuant to  
25 paragraph 7.6 of the PSA, and otherwise as customary between buyer and  
26 seller.

27 b. [Reserved].  
28

1 c. As to All Properties from the Live Oak Property sale proceeds: All reasonable  
2 and actually expended costs of maintaining insurance for assets of the Estate  
3 up through the close of escrow or when the assets/properties cease to be  
4 property of the Estate, including the \$6,770.68 advanced and expended by  
5 Trustee for commercial liability insurance, approximately \$6,800 advanced by  
6 Lee Coddling through October 2021 to maintain insurance on the Live Oak  
7 Property (and at the ongoing rate of \$1,700 per month for four months since  
8 June 2021), and an additional reserve to maintain future insurance in the  
9 amount of \$15,000, which shall be held by Trustee in a segregated account  
10 and, in the event of any unused portion, shall be returned to FCW without  
11 need for further order of the Court.

12 d. As to Live Oak Property from the Live Oak Property sale proceeds: The sum  
13 of \$100,000 for the Trustee's attorneys' fees for the Estate through the date of  
14 closing escrow on the Live Oak Property, which amount shall be held in a  
15 segregated account by the Trustee pending Court approval of Trustee's  
16 attorneys' fees (for informational purposes as of November 30, 2021, the  
17 outstanding balance for attorneys' fees for the Trustee exceeds \$170,000).

18 e. As to the San Marcos Property from the San Marcos Property sale proceeds:  
19 The sum of \$60,000 for the Trustee's attorneys' fees for the Estate through the  
20 date of closing escrow on the San Marcos Property, which amount shall be  
21 held in a segregated account by the Trustee pending Court approval of such  
22 fees.

23 f. As to the Texas Road Property from the Texas Road Property sale proceeds:  
24 The sum of \$30,000 for the Trustee's attorneys' fees for the Estate through the  
25 date of closing escrow on the Texas Road Property, which amount shall be  
26 held in a segregated account by the Trustee pending Court approval of such  
27 fees.  
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- 1 g. As to the Live Oak Property, from the Live Oak Property sale proceeds:  
2 Broker's fees for the Estate's jointly employed broker Hilco Real Estate, LLC  
3 ("Hilco") in the amount of 1.75% of the gross sale price of the Live Oak  
4 Property, which shall be paid directly out of escrow.
- 5 h. As to the Texas Road Property from the Texas Road Property sale proceeds:  
6 Broker's fees for the Estate's jointly employed broker Hilco in the amount of  
7 1.75% of the gross sale price of the Texas Road Property, which shall be paid  
8 directly out of escrow.
- 9 i. As to the San Marcos Property from the San Marcos Property sale proceeds:  
10 Broker's fees for the Estate's jointly employed broker Hilco in the amount of  
11 1.75% of the gross sale price of the San Marcos Property, which shall be paid  
12 directly out of escrow.
- 13 j. As to the Live Oak Property, from the Live Oak Property sale proceeds:  
14 Broker's fees for the Estate's jointly employed broker Onyx Asset Advisors,  
15 LLC ("Onyx") in the amount of 1.75% of the gross sale price of the Live Oak  
16 Property, which shall be paid directly out of escrow.
- 17 k. As to the Texas Road Property from the Texas Road Property sale proceeds:  
18 Broker's fees for the Estate's jointly employed broker Onyx in the amount of  
19 1.75% of the gross sale price of the Texas Road Property, which shall be paid  
20 directly out of escrow.
- 21 l. As to the San Marcos Property from the San Marcos Property sale proceeds:  
22 Broker's fees for the Estate's jointly employed broker Onyx in the amount of  
23 1.75% of the gross sale price of the San Marcos Property, which shall be paid  
24 directly out of escrow.
- 25 m. As to the Live Oak Property, from the Live Oak Property sale proceeds:  
26 Compensation for the Trustee in an amount equal to 2.25% of the gross  
27 purchase price of each of the Live Oak Property, which amount shall be held  
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1 in a segregated account by the Trustee pending Court approval of Trustee's  
2 compensation under 11 U.S.C. § 326.

3 n. As to the Texas Road Property, from the Texas Road Property sale proceeds:  
4 Compensation for the Trustee in an amount equal to 2.25% of the gross  
5 purchase price of each of the Texas Road Property, which amount shall be  
6 held in a segregated account by the Trustee pending Court approval of  
7 Trustee's compensation under 11 U.S.C. § 326.

8 o. As to the San Marcos Property from the San Marcos Property sale proceeds:  
9 Compensation for the Trustee in an amount equal to 2.25% of the gross  
10 purchase price of each of the San Marco Property, which amount shall be held  
11 in a segregated account by the Trustee pending Court approval of Trustee's  
12 compensation under 11 U.S.C. § 326.

13 p. As to All Properties: An additional \$30,000 per closed sale transaction to be  
14 paid solely from the proceeds of that sale which the Trustee consummates for  
15 miscellaneous contribution for the benefit of the Estate to pay other  
16 administrative expenses and other creditor claims. This subparagraph shall  
17 not apply for any sale transaction that does not close.

18 q. As to Live Oak Property as noted and as to TS Adjoining Properties as noted:  
19 The sum of \$12,000 for the Trustee's field agent Lori Ensley of Bicher &  
20 Associates and other professionals, including accountants and agents, or any  
21 other permitted administrative expense, which shall be held by the Trustee and  
22 paid according to the approved procedures set forth in the field agent's  
23 employment application. As to TS Adjoining Properties, the actual amount for  
24 services invoiced by Trustee's field agent or other permitted administrative  
25 expenses not to exceed \$12,000 per property.

26 r. As to All Properties: To the extent not paid directly by FCW, actual and  
27 reasonable costs of securing and maintaining the properties including cost of  
28

1 utilities and costs to secure the property and to change locks. Trustee shall do  
2 his best to notify FCW in advance of any expenses before they are incurred.  
3 s. For purposes of convenience only, preliminary estimates of 2.a. through 2.r.  
4 are set forth in Exhibit "2".

5 3. Any line items which are not paid or used in full according to the descriptions above  
6 shall be returned to FCW upon entry of further Court order, or the closing of the bankruptcy case,  
7 whichever comes first.

8 4. All funds not otherwise provided for above shall be paid immediately (i.e. no later  
9 than the closing date) to FCW from escrow on a sale of the Live Oak Property, Texas Road Property,  
10 and San Marcos Property in accordance with transfer instructions provided by FCW to the Trustee or  
11 his escrow agent. All payments shall be made in good funds. Through this stipulation, FCW does not  
12 consent to receiving any less than \$8,250,000 through a sale of the Live Oak Property at the initial  
13 bid price of \$9,100,000, and its consent to sale under 11 U.S.C. § 363(f)(2) is expressly conditioned  
14 on its receipt of no less than \$8,250,000 through escrow from the Live Oak Property. Further, FCW  
15 has no obligation to consent to a sale or release their lien on TS Adjoining Properties, and FCW has  
16 specifically advised the Trustee that it will not consent to the sale of any of the Properties that  
17 includes a provision that FCW is required to carry any debt owed by the purchaser of any such  
18 property at either a senior-most or junior priority level after the transaction closes.

19 5. As to Live Oak Property: Provided that the Court approves the bid procedures set  
20 forth in the Live Oak PSA, and a qualifying overbid is received and accepted by the Trustee, FCW  
21 consents to the voluntary subordination of its deed of trust solely on the proceeds of a consummated  
22 sale of the Live Oak Property to pay the break-up fee and due diligence costs to Buyer if it is the  
23 unsuccessful bidder, pursuant to the terms of the PSA.

24 6. As to Live Oak Property: As previously agreed, if the gross purchase price of the  
25 Live Oak Property exceeds \$10,000,000, FCW agrees to an additional subordination of its lien (and,  
26 as stated in paragraph 2 above, solely with regard to the Live Oak Property proceeds of sale out of  
27 escrow, pursuant to the terms of this stipulation) in an amount equal to an additional 2.5% of the  
28 gross purchase price of the Property which is in excess of \$10,000,000 (i.e. if the purchase price is

1 \$10,100,000, the Estate shall receive an additional 2.5% of \$100,000, or \$2,500.00) for the benefit of  
2 the Estate to be allocated according to the Trustee's business discretion.

3 7. The Parties acknowledge that FCW is under no compulsion or obligation to extend  
4 the Enforcement Date. Due to unanticipated delays which cannot be attributed to either Buyer, FCW,  
5 or Trustee, the anticipated closing date of the Live Oak sale has been postponed to early 2022. Upon  
6 the execution of this Stipulation, FCW consents to the one-time extension and modification of the  
7 Enforcement Date as follows: the Enforcement Date shall be extended from December 1, 2021 to  
8 January 28, 2022. If, prior to the Enforcement Date, the Trustee has filed a motion with the Court  
9 seeking approval of a sale of one or more of the real property parcels over which FCW asserts a  
10 secured claim, then the Enforcement Date shall be extended to March 15, 2022. Nothing in this  
11 Stipulation affects the ability of Trustee to seek abandonment of some or all of the Properties after  
12 the Enforcement Date or FCW to foreclose on some or all of the Properties after the Enforcement  
13 Date. The Parties agree to the entry of an amended order granting relief from the automatic stay to  
14 memorialize the terms of this Stipulation and the extension of the Enforcement Date in substantially  
15 the form of the order attached as **Exhibit "4."**

16 8. As to All Properties: Trustee on behalf of the Estate, stipulates and agrees to the  
17 validity, extent, and priority of FCW's secured claim and liens, and, effective as of the Bankruptcy  
18 Court's entry of an order approving this Stipulation, and, subject to the terms of this agreement,  
19 releases FCW from all known or unknown claims held by the Trustee or the Estate, including any  
20 claims under 11 U.S.C. § 506(c) regarding the Live Oak Property, San Marcos Property, the Texas  
21 Road Property, and any other collateral of FCW. This provision and all other terms of this agreement  
22 are not effective unless specifically approved by the Bankruptcy Court, after notice and a hearing.

23 9. As additional consideration for the Trustee's waiver of the claims for surcharge  
24 pursuant to 11 U.S.C. § 506(c) regarding the Properties and FCW's other collateral, the Parties agree  
25 that, provided that the Court approves the Trustee's waiver of claims including the claims for  
26 surcharge, in the event that FCW forecloses on or causes the disposition of all three of the  
27 Properties, the following line items shall be reimbursed to the Estate and its professionals as follows:

28 a. \$50,000 for the Trustee's attorneys' fees.

- 1 b. Fees and expenses for Trustee's field agent Lori Ensley not to exceed  
2 \$15,000.
- 3 c. All actually expended, reasonable administrative expenses (i.e. costs, and not  
4 fees) related to the professional fees stated above, not to exceed \$5,000.
- 5 d. All insurance premiums actually paid by Trustee for coverage necessary to  
6 maintain the administration of any property of the Estate over which FCW  
7 asserts a secured claim.
- 8 e. All post-petition *ad valorem* property taxes (if any) charged to the Estate over  
9 the course of the Trustee's administration. Alternatively, at FCW's discretion,  
10 FCW may choose to pay the outstanding property taxes such that no taxes are  
11 charged to the Estate. FCW may dispute the amount of such taxes and pay the  
12 County of San Luis Obispo directly when FCW's dispute is resolved, and the  
13 Trustee is not entitled to compensation under 11 U.S.C. § 326 for any such  
14 payment(s) made by FCW directly to the County.
- 15 f. The lump sum of \$80,000 as a miscellaneous settlement payment for the  
16 surcharge issues.
- 17 g. For purposes of convenience only, preliminary estimates of 9.a. through 9.f.  
18 are set forth in Exhibit "3".
- 19 h. The amounts set forth in this paragraph 9 shall only be earned by and paid to  
20 the Trustee if the Trustee delivers full possession of the Properties, without  
21 any unauthorized occupants or tenants, and the other remaining collateral of  
22 FCW (e.g., equipment and inventory) to FCW upon abandonment of the  
23 Properties and the other FCW collateral by the Trustee, or prior to the  
24 foreclosure of such Properties by FCW.
- 25 10. As additional consideration for the Trustee's waiver of the claims for surcharge  
26 pursuant to 11 U.S.C. § 506(c) regarding the Properties and FCW's other collateral, to the extent  
27 FCW forecloses on one or more of the Properties, it shall be responsible for either all post-petition  
28 *ad valorem* property taxes (if any) charged to the Estate over the course of the Trustee's



1 administration for the property foreclosed upon, or, alternatively, at FCW's discretion, FCW shall  
2 pay the outstanding property taxes such that no taxes are charged to the Estate with respect to the  
3 property foreclosed upon. FCW may dispute the amount of such taxes with the County of San Luis  
4 Obispo. FCW may also pay the County of San Luis Obispo directly for the taxes addressed in this  
5 paragraph either before or after the resolution of any dispute over such taxes, and the Trustee is not  
6 entitled to compensation under 11 U.S.C. § 326 for such payment(s) made by FCW directly to the  
7 County. Additionally, should the Trustee complete the sale of the Live Oak Property and FCW  
8 thereafter proceeds to foreclose on the remaining TS Adjoining Properties, provided that the Trustee  
9 delivers full possession of the remaining Properties, without any unauthorized occupants or tenants,  
10 and possession the other remaining collateral of FCW (*e.g., equipment and inventory*) to FCW upon  
11 abandonment of the Properties and the other FCW collateral <sup>*owned by Northern Ran*</sup> by the Trustee, or prior to the  
12 foreclosure or disposition of such Properties by FCW, the, Trustee <sup>*owned by Northern Ran*</sup> shall be entitled to receive a lump  
13 sum payment from FCW of \$30,000 *per property* as consideration for the waiver of claims under 11  
14 U.S.C. § 506(c), which is in addition to the any allocations stated in paragraph 2.

15 11. Concurrently with the waivers described above, upon the Trustee's delivery of full  
16 possession of FCW's collateral in accordance with this Stipulation, except for its allowed claim  
17 against the Estate, FCW waives any and all other claims against the Estate, and any and all claims  
18 against the Trustee and his agents and professionals acting in their capacities as agents for the Estate,  
19 and any and all claims against the Trustee in his individual capacity related to the administration of  
20 this case.

21 12. FCW shall immediately recommend to the Trustee one or more qualified security  
22 agents and/or property managers to supervise and control the access to and use of all three properties  
23 and all collateral of FCW, and shall consult with the Trustee to recommend necessary steps and  
24 necessary agreements for the maintenance and preservation of the three properties and FCW's  
25 collateral. The security agents/property managers shall be employed on behalf of the Estate by the  
26 Trustee, if possible, and FCW shall directly advance and pay all costs and fees of and incurred by the  
27 security agents/property managers. Security agents and/or property managers shall be employed as  
28 necessary as determined by FCW with the consent of the Trustee; provided, however, there is no

1 obligation to employ security agents and/or property managers absent such a need, as determined by  
2 FCW – Trustee shall have no obligation to recommend collateral preservation procedures to FCW  
3 and shall not be held responsible in the event of any damage or deterioration to collateral after FCW  
4 assumes possession and control of the Properties. The security agents/property managers shall not  
5 take any action and not incur any fees or expenses outside of what is in its or their contracts without  
6 the prior consent of the Trustee and FCW. The security agents/property managers shall provide  
7 reasonable access to the properties to both FCW and the Trustee, and to those agents or  
8 representatives of FCW and the Trustee that are approved by both FCW and the Trustee. To the  
9 extent that the mutually approved security agents/property managers seek any recovery from the  
10 Estate including but not limited to recoveries on account of services performed for maintenance,  
11 access control, supervision, or preservation of FCW’s collateral, FCW shall be directly liable for  
12 such expenses and FCW fully indemnifies the Estate for any such costs and shall immediately pay  
13 all such costs, and shall undertake to defend the Estate against adverse claims arising from the  
14 services performed by the security agents/property managers. The Trustee shall prepare and file a  
15 motion to employ the security agents/property manager on behalf of the Estate, if necessary, and the  
16 specific terms for management and control of the properties shall be memorialized in a separate  
17 agreement.

18 13. This stipulation, after it has been approved by the Court, will fully meet and satisfy  
19 the requirements of Section 6.5 of the Live Oak PSA requiring an “acceptable carve out agreement”  
20 between the Trustee, the Estate, and FCW. This stipulation constitutes the entire agreement between  
21 the Parties.

22 14. This stipulation is subject to approval by the Bankruptcy Court. No provision of this  
23 stipulation is effective or binding on any Party, unless the Court enters an order approving these  
24 provisions. Any disputes over the interpretation or enforcement of this stipulation shall be resolved  
25 solely by the United States Bankruptcy Court for the Central District of California, Santa Ana  
26 Division.

1 15. Once this stipulation is approved by the Bankruptcy Court, no further material  
2 modification or material amendment shall be effective unless: (1) such amendment or modification  
3 is in writing, and (2) the amendment or modification is approved by the Bankruptcy Court.

4 16. This stipulation may be executed in one or more counterparts and facsimile or  
5 electronic signatures may be used in filing this document with the Court.

6  
7 Dated: December 10, 2021

FARM CREDIT WEST, FCLA

8  
9 By: 

KEVIN RALPH

Position: Executive Vice President

10  
11 Dated: December 6, 2021

12  
13 By: 

RICHARD A. MARSHACK  
Chapter 7 Trustee for Debtor,  
NORTHERN HOLDING, LLC

1 EXHIBIT 1

2  
3 **LEGAL DESCRIPTION**

4 THE LAND REFERRED TO IN THIS GUARANTEE IS SITUATED IN THE STATE OF **CALIFORNIA**, COUNTY OF **SAN LUIS**  
5 **OBISPO**, AND IS DESCRIBED AS FOLLOWS:

6 **PARCEL A: APN 026,342,039**

7 **THE NORTHEAST QUARTER OF SECTION 12, IN TOWNSHIP 27 SOUTH, RANGE 11 EAST MOUNT DIABLO**  
8 **BASE AND MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO**  
9 **THE OFFICIAL PLAT OF THE SURVEY OF SAID LAND APPROVED BY THE SURVEYOR GENERAL.**

10 **PARCEL A-1:**

11 **AN EASEMENT FOR UTILITY PURPOSES BEGINNING AT LIVE OAK ROAD AND EXTENDING NORTH OVER**  
12 **THE EAST 10 FEET ON THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 12,**  
13 **TOWNSHIP 27, RANGE 11, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF SAN LUIS**  
14 **OBISPO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF THE SURVEY OF SAID LAND**  
15 **APPROVED BY THE SURVEYOR GENERAL.**

16 **PARCEL A-2:**

17 **AN EASEMENT TO PROVIDE INGRESS, EGRESS, PUBLIC UTILITIES AND INCIDENTAL PURPOSES TO THE**  
18 **SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 27 SOUTH, RANGE**  
19 **11 EAST, MOUNT DIABLO BASE AND MERIDIAN OVER, UNDER AND UPON A STRIP OF LAND 30 FEET**  
20 **WIDE LOCATED IN THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 27 SOUTH, RANGE 11 EAST,**  
21 **MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT OF THE SURVEY OF SAID**  
22 **LAND APPROVED BY THE SURVEYOR GENERAL, AND LYING EQUALLY ON EACH SIDE OF THE**  
23 **FOLLOWING DESCRIBED CENTERLINE:**

24 **COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 12, SAID CORNER BEING SHOWN AS**  
25 **A 1/2" REBAR CAPPED RCE 14994 IN BOOK 1, PAGE 159 OF OFFICIAL RECORDS;**  
26 **THENCE ALONG THE NORTHERLY LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 12, SOUTH**  
27 **89°29'51" WEST 1,393.11 FEET MORE OR LESS TO THE SOUTHWEST CORNER OF THE SOUTHEAST**  
28 **QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 12 AND THE TRUE POINT OF BEGINNING;**  
**THENCE LEAVING SAID NORTHERLY LINE SOUTH 20°22'08" WEST, 701.76 FEET TO A POINT WHICH**  
**BEARS SOUTH 70°16' EAST, 17.00 FEET FROM THE CENTER OF A 48" LIVE OAK TREE;**  
**THENCE SOUTH 10°30'20" WEST, 341.71 FEET TO A POINT WHICH BEARS SOUTH 79°29' EAST, 15.00**  
**FEET FROM THE CENTER OF A CATTLE GUARD;**  
**THENCE SOUTH 79°29' EAST TO THE CENTER OF LIVE OAK ROAD (COUNTY ROAD NO. M5262).**

**THE SIDE LINES OF THE ABOVE MENTIONED 30 FOOT STRIP SHALL BE LENGTHENED AND SHORTENED**  
**TO MEET THE BEGINNING AND ENDING BOUNDARY LINES.**

**EXHIBIT 2**

Estimates as to Live Oak Property proceeds:

Item	Amount
Closing costs: settlement fee	\$500
Closing costs: title search fee	\$250
Closing costs: escrow fee	\$9,000
Closing costs: title insurance	\$20,000
County transfer tax	\$1.10 per \$1,000
Commercial liability insurance @ \$3,946.50 for San Marcos (8/21 – 8/22) @ \$2,824.18 for Live Oak (10/21 – 10/22)	\$6,770.68 +\$15,000 reserve
Insurance (Live Oak) (Monthly)	\$1,700/mo. since June 2021
Trustee's attorneys' fees	\$100,000
Broker's fee (Hilco)	1.75% of gross
Broker's fee (Onyx)	1.75% of gross
Trustee's compensation (reduced)	2.25% of gross
Miscellaneous payment	\$30,000
Trustee's field agent Lori Ensley	\$12,000
All other actual costs of securing and maintaining property such as utilities	TBD

Estimates as to San Marcos Property proceeds:

Item	Amount
Closing costs	TBD
County transfer tax	\$1.10 per \$1,000
Trustee's attorneys' fees	\$60,000
Broker's fee (Hilco)	1.75% of gross
Broker's fee (Onyx)	1.75% of gross
Trustee's compensation (reduced)	2.25% of gross
Miscellaneous payment	\$30,000
Trustee's field agent Lori Ensley	\$12,000
All other actual costs of securing and maintaining property such as utilities	TBD

Estimates as to Texas Road Property proceeds:

Item	Amount
Closing costs	TBD
County transfer tax	\$1.10 per \$1,000
Trustee's attorneys' fees	\$30,000
Broker's fee (Hilco)	1.75% of gross
Broker's fee (Onyx)	1.75% of gross
Trustee's compensation (reduced)	2.25% of gross
Miscellaneous payment	\$30,000
Trustee's field agent Lori Ensley	\$12,000
All other actual costs of securing and maintaining property such as utilities	TBD

**EXHIBIT 3**

Estimates for consideration for surcharge waiver (all properties foreclosed):

Item	Amount
Attorneys' fees without regard to category	\$50,000
Fees for field agent Lori Ensley	\$15,000
Administrative costs for professionals	\$5,000
Insurance premiums	\$6,770.68 + \$1,700 monthly since June 2021
Postpetition property taxes	TBD – paid directly by FCW
Miscellaneous payment	\$80,000

Estimates for consideration for surcharge waiver (Live Oak sold, others foreclosed):

Item	Amount
Attorneys' fees without regard to category	already paid per ¶ 2
Fees for field agent Lori Ensley	already paid per ¶ 2
Administrative costs for professionals	already paid per ¶ 2
Insurance premiums	already paid per ¶ 2
Postpetition property taxes	TBD – paid directly by FCW
Miscellaneous payment for San Marcos	\$30,000
Miscellaneous payment for Texas Road	\$30,000
Trustee's attorneys' fees for negotiating taxes	TBD – subject to separate stipulation if any

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**EXHIBIT 4**

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Michael J. Gomez (State Bar No. 251571) mgomez@frandzel.com Reed S. Waddell (State Bar No. 106644) rwaddell@frandzel.com FRANDZEL ROBINS BLOOM & CSATO, L.C. 1000 Wilshire Boulevard, Nineteenth Floor Los Angeles, California 90017-2427 Telephone: (323) 852-1000 Facsimile: (323) 651-2577  <input checked="" type="checkbox"/> <i>Attorney for Movant</i> <input type="checkbox"/> <i>Movant appearing without an attorney</i>	FOR COURT USE ONLY			
<p align="center"><b>UNITED STATES BANKRUPTCY COURT</b>  <b>CENTRAL DISTRICT OF CALIFORNIA – <u>SANTA ANA</u> DIVISION</b></p>				
In re:  NORTHERN HOLDINGS, LLC,          Debtor(s).	<table border="1"> <tr> <td data-bbox="807 812 1421 896">           CASE NO.: 8:20-bk-13014-MW            CHAPTER: 11         </td> </tr> <tr> <td data-bbox="807 896 1421 1064"> <p align="center"><b>ORDER GRANTING MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (REAL PROPERTY)</b></p> </td> </tr> <tr> <td data-bbox="807 1064 1421 1285">           DATE: August 30, 2021            TIME: 2:00 p.m.            COURTROOM: 6C            PLACE: 411 West Fourth Street            Santa Ana, CA 92701         </td> </tr> </table>	CASE NO.: 8:20-bk-13014-MW CHAPTER: 11	<p align="center"><b>ORDER GRANTING MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (REAL PROPERTY)</b></p>	DATE: August 30, 2021 TIME: 2:00 p.m. COURTROOM: 6C PLACE: 411 West Fourth Street Santa Ana, CA 92701
CASE NO.: 8:20-bk-13014-MW CHAPTER: 11				
<p align="center"><b>ORDER GRANTING MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (REAL PROPERTY)</b></p>				
DATE: August 30, 2021 TIME: 2:00 p.m. COURTROOM: 6C PLACE: 411 West Fourth Street Santa Ana, CA 92701				
<b>Movant:</b> Farm Credit West, FLCA				

1. The Motion was: ☒ Opposed ☐ Unopposed ☒ Settled by stipulation
2. The Motion affects the following real property and the personal property described in item no. 17 below (collectively, the "Property"):
- Street address: 2380 Live Oak Rd  
 Unit/suite number:  
 City, state, zip code: Paso Robles, CA 93446  
 Legal description or document recording number (including county of recording):

☒ See attached page and item no. 17 below.



The Motion is granted under:

- a. ☒ 11 U.S.C. § 362(d)(1)
  - b. ☒ 11 U.S.C. § 362(d)(2)
  - c. ☐ 11 U.S.C. § 362(d)(3)
  - d. ☒ 11 U.S.C. § 362(d)(4). The filing of the bankruptcy petition was part of a scheme to hinder, delay, or defraud creditors that involved:
    - (1) ☒ The transfer of all or part ownership of, or other interest in, the Property without the consent of the secured creditor or court approval; and/or
    - (2) ☒ Multiple bankruptcy cases affecting the Property.
    - (3) ☒ The court ☒ makes ☐ does not make ☐ cannot make a finding that the Debtor was involved in this scheme.
    - (4) If recorded in compliance with applicable state laws governing notices of interests or liens in real property, this order shall be binding in any other case under this title purporting to affect the Property filed not later than 2 years after the date of the entry of this order by the court, except that a debtor in a subsequent case under this title may move for relief from this order based upon changed circumstances or for good cause shown, after notice and a hearing.
3. ☒ As to Movant, its successors, transferees and assigns, the stay of 11 U.S.C. § 362(a) is:
    - a. ☒ Terminated as to the Debtor and the Debtor's bankruptcy estate.
    - b. ☐ Modified or conditioned as set forth in Exhibit \_\_\_\_\_ to this order.
    - c. ☐ Annulled retroactively to the bankruptcy petition date. Any postpetition acts taken by Movant to enforce its remedies regarding the Property do not constitute a violation of the stay.
  4. ☒ Movant may enforce its remedies to foreclose upon and obtain possession of the Property in accordance with applicable nonbankruptcy law, but may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.
  5. ☐ Movant must not conduct a foreclosure sale of the Property before (date) \_\_\_\_\_.
  6. ☐ The stay shall remain in effect subject to the terms and conditions set forth in the Adequate Protection Agreement contained within this order.
  7. ☐ In chapter 13 cases, the trustee must not make any further payments on account of Movant's secured claim after entry of this order. The secured portion of Movant's claim is deemed withdrawn upon entry of this order without prejudice to Movant's right to file an amended unsecured claim for any deficiency. Absent a stipulation or order to the contrary, Movant must return to the trustee any payments received from the trustee on account of Movant's secured claim after entry of this order.
  8. ☐ The co-debtor stay of 11 U.S.C. § 1201(a) or § 1301(a) is terminated, modified or annulled as to the co-debtor, as to the same terms and conditions as to the Debtor.
  9. ☒ The 14-day stay as provided in FRBP 4001(a)(3) is waived.
  10. This order is binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of the Bankruptcy Code.
  11. Movant, or its agents, may, at its option, offer, provide and enter into a potential forbearance agreement, loan modification, refinance agreement or other loan workout or loss mitigation agreement. Movant, through its servicing agent, may contact the Debtor by telephone or written correspondence to offer such an agreement.

12. Upon entry of this order, for purposes of Cal. Civ. Code § 2923.5, the Debtor is a borrower as defined in Cal. Civ. Code § 2920.5(c)(2)(C).
13. ☒ A designated law enforcement officer may evict the Debtor and any other occupant from the Property regardless of any future bankruptcy case concerning the Property for a period of 180 days from the entry of this Order:
- (a) ☒ without further notice.
  - (b) ☒ upon recording of a copy of this order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law.
14. ☐ This order is binding and effective in any bankruptcy case commenced by or against the Debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the Property.
15. ☒ This order is binding and effective in any bankruptcy case commenced by or against any debtor who claims any interest in the Property for a period of 180 days from entry of this Order:
- (a) ☒ without further notice.
  - (b) ☒ upon recording of a copy of this order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law.
16. ☒ This order is binding and effective in any future bankruptcy case, no matter who the debtor may be
- (a) ☒ without further notice.
  - (b) ☒ upon recording of a copy of this order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law.
17. ☒ Other (*specify*): Relief from the automatic stay is further granted under the grounds provided for above in item nos. 2.a., 2.b., 2.d., 3, 4, 9, 10, 15, and 16 as to the personal property described in the Security Agreement attached to the Motion as Exhibit 3 (Dkt. 11).

The Enforcement Date as defined and set forth in the Order Granting Relief from Stay (Dkt. 210), which affects the real properties, is being continued by separate stipulation and order. This Order does not affect that Enforcement Date.

###

(This attachment is the continuation page for paragraph 2 of this order.)

2. The Motion affects the following real property:

<u>Property Name</u>	<u>APN</u>	<u>Property Address / Location</u>
Rabbit Ridge Winery	026-104-001	1172 San Marcos Road, Paso Robles, CA, 93446.
Texas Road Vineyard	027-145-022	Located along the north side of Texas Road, just north of San Marcos Road and ~1.5 miles west of Highway 101, being ~4 miles northwest of Paso Robles, in rural San Luis Obispo County.
Live Oak Vineyard	026-342-039	2380 Live Oak Road, Paso Robles, CA 93446. Located ~0.2 mile north of Live Oak Road and ~0.8 mile west of Arbor Road, being ~2.5 miles southwest of Paso Robles, in rural San Luis Obispo County.

Legal description or document recording number (including county of recording):

PARCEL A: APN 026,342,039

The Northeast quarter of Section 12, in Township 27 South, Range 11 East, Mount Diablo Base and Meridian, in the County of San Luis Obispo, State of California, according to the Official Plat of the Survey of said land approved by the Surveyor General.

PARCEL A-1:

An Easement for utility purposes beginning at Live Oak Road and extending North over the East 10 feet on the Northeast quarter of the Southeast quarter of Section 12, Township 27, Range 11, Mount Diablo Base and Meridian, in the County of San Luis Obispo, State of California, according to the Official Plat of the Survey of said land approved by the Surveyor General.

PARCEL A-2:

An Easement to provide ingress, egress, public utilities and incidental purposes to the Southwest quarter of the Northwest quarter of Section 12, Township 27 South, Range 11 East, Mount Diablo Base and Meridian over, under and upon a strip of land 30 feet wide located in the Southeast quarter of Section 12, Township 27 South, Range 11 East, Mount Diablo Base and Meridian, according to the Official Plat of the Survey of said land approved by the Surveyor General, and lying equally on each side of the following described centerline:

Commencing at the East quarter corner of said Section 12, said corner being shown as a ½" rebar capped RCE 14994 in Book 1, Page 159 of Official Records;

Thence along the Northerly line of the Southeast quarter of said Section 12, South 89°29'51" West, 1,393.11 feet more or less to the Southwest corner of the Southeast quarter of the Northeast quarter of said Section 12 and the True Point of Beginning;

Thence leaving said Northerly line South 20°22'08" West, 701.76 feet to a point which bears South 70°16' East, 17.00 feet from the center of a 48" live oak tree;

Thence South 10°30'20" West, 341.71 feet to a point which bears South 79°29' East, 15.00 feet from the center of a cattle guard;

Thence South 79°29' East to the center of Live Oak Road (County Road No. M5262).

The side lines of the above mentioned 30 foot strip shall be lengthened and shortened to meet the beginning and ending boundary lines.

PARCEL B: APN 026,021,070

The Southerly 40 acres of the North half of the Northwest quarter of Section 12, in Township 26 South, Range 11 East, Mount Diablo Base and Meridian, in the County of San Luis Obispo, State of California, according to the Official Plat of the Survey of said land approved by the Surveyor General.

EXCEPTING THEREFROM an undivided  $\frac{1}{2}$  interest in and to all oil, gas and other hydrocarbon substances and minerals in or under said land, but without right of surface entry as reserved by Clara M. Guthrie, a widow, in Deed recorded March 27, 1961 in Book 1115, Page 246 of Official Records.

PARCEL C: APN: 027,145,022

Government Lots 3 and 4 and the East half of the Southwest quarter of Section 31, Township 25 South, Range 12 East, Mount Diablo Base and Meridian, in the County of San Luis Obispo, State of California, according to the Official Plat of the Survey of said land approved by the Surveyor General, as described in Certificate of Compliance recorded September 13, 1985 as Instrument No. 052170 of Official Records.

EXCEPTING THEREFROM an undivided  $\frac{1}{2}$  interest in the land owners share of royalties from oil, gas, other hydrocarbons, or minerals actually produced on or from said land or any part thereof, as reserved by George Blechen and Marie Blechen, his wife and Elsie Loose, a widow in Deed dated May 16, 1958 and recorded June 10, 1958 in Book 943, Page 507 of Official Records.

ALSO EXCEPTING 50% of grantors present interest in all oil, gas and other hydrocarbons and other minerals that are on or may be on or within said lands; together with 50% interest in and to all oil, gas and other hydrocarbons and other minerals as same may be increased upon expiration of royalty interests as reserved in Deed dated May 16, 1958 executed by George Blechen and Marie Blechen, his wife and by Elsie Loose, a widow and recorded June 10, 1958 in Book 943, Page 507 of Official Records.

Such mineral reservations in favor of grantors herein are without any right of entry to the surface of said land and are without any right of entry to the first 500 feet adjacent to and lying beneath the surface of said land.

PARCEL C-1:

A 30 foot wide Easement for ingress, egress and incidental purposes over that portion of Lot 4 of "Home of the Almond", in the County of San Luis Obispo, State of California, according to map recorded in, Book 2, Page 17 of Maps, the centerline of which is more particularly described as follows:

Commencing at the Southeast corner of said Lot 4;  
Thence along the Easterly line of Lot 4, North  $0^{\circ}30'00''$  West, 65.00 feet to the point of beginning;  
Thence parallel to the South line of Lot 4, North  $89^{\circ}45'00''$  West, 203.81 feet;  
Thence South  $73^{\circ}38'54''$  West, 138.47 feet;  
Thence South  $78^{\circ}42'47''$  West, 52.18 feet to a point that lies 15.00 feet North of the South line of said Lot 4;  
Thence 15 feet Northerly of and parallel to said South line of Lot 4, North  $89^{\circ}45'00''$  West, 559.74 feet to the Westerly line of Lot 4.

PARCEL D: APN: 026,104,001

Lot 4 of Section 5, Lots 1, 2, 3 and 4, the Southwest Quarter of the Northeast Quarter and the Southeast Quarter of the Northwest Quarter of Section 6, all in Township 26 South, Range 12 East, Mount Diablo Base and Meridian, in the County of San Luis Obispo, State of California, according to the official plate thereof.

EXCEPTING THEREFROM that portion lying South of San Marcos Road.

ALSO EXCEPTING THEREFROM  $\frac{1}{2}$  of the oil, gas, mineral and other hydrocarbon substances in and under said land as reserved by Robert L. Linnett, a married man and Henry C. Brigham, a married man in equal shares by deed recorded June 21, 1977 in Book 1988, Page 755 of Official Records.

PARCEL E: APN: 014,311,014

The Northeast quarter of Section 23, Township 26 South, Range 10 East, Mount Diablo Base and Meridian, in the County of San Luis Obispo, State of California.

PARCEL E-1:

A right of way for ingress to and egress from said Parcel 1, and for the installation and maintenance of utility pipe and pole lines, in, upon, along and under a strip of land 40 feet wide, containing 0.038 acres in the Southwest corner of the Southeast quarter of Section 14, Township 26 South, Range 10 East, and 0.638 acres in the Southwest quarter of said section, the centerline of which strip of land is described as follows:

Beginning at a point 28 feet East of the South  $\frac{1}{4}$  corner of Section 14, Township 26 South, Range 10 East, Mount Diablo Base and Meridian, and running thence North  $45^{\circ}$  West, 68.85 feet to a point 20 feet West of the Easterly boundary line of the Southwest quarter of Section 14;  
Thence North and parallel to said Easterly boundary line, 343.9 feet to a point;  
Thence North  $42^{\circ}0'$  West, 28.5 feet to a point;  
Thence North  $59^{\circ}40'$  West, 293.5 feet more or less to the Southeasterly boundary line of the San Marcos-Adelaide County Road.

Situated in the State of California, Unincorporated Area, County of Sonoma, and described as follows:

PARCEL ONE

BEGINNING on section line at a point 14.30 chains South from the northwest corner of Section 5, Township 8 North, Range 9 West, M.D.B. & M., and running thence North  $89^{\circ} 45'$  East, 63.21 chains to a station, thence North  $69^{\circ}$  East, 3.00 chains to an iron pin driven in the center of the county road leading from Healdsburg to Guerneville; thence South  $13^{\circ} 45'$  East, 2.15 chains to an iron pin, thence South  $14^{\circ} 30'$  East, 3.23 chains to an iron pin in the center of said road, thence North  $77^{\circ} 15'$  East, 1.91 chains; thence South  $33^{\circ} 40'$  East, 0.35 chains, thence South  $74^{\circ} 45'$  East, 0.30 chains; thence North  $84^{\circ} 30'$  East, 0.18 chains; thence North  $62^{\circ} 30'$  East, 0.39 chains; thence North  $37^{\circ}$  East, 0.62 chains to a station; thence North  $77^{\circ} 15'$  East, 24.82 chains to a stake driven in the middle of a slough in the division line between the lands herein described and the lands of John McClish; thence North  $19^{\circ}$  East, 2.71 chains; thence North  $42^{\circ} 30'$  East, 1.46 chains, thence North  $32^{\circ}$  East, 2.25 chains; thence North  $24^{\circ} 10'$  East, 0.65 chains to an iron pin at corner; thence South  $78^{\circ} 15'$  West, 32.85 chains to an iron pin in the center of aforesaid county road; thence North  $22^{\circ}$  West, in the center of road, 2.49 chains to an iron pin; thence South  $89^{\circ} 30'$  West, 65.00 chains to section line, and thence South on section line, 3.18 chains to the point of beginning.

EXCEPTING THEREFROM all that portion lying Easterly of the centerline of the Healdsburg — Guerneville Road.

PARCEL TWO

BEGINNING at a point, 14.30 chains South from the northwest corner of Section 5, Township 8 North, Range 9 West, M.D.B. & M., and running thence, North  $89^{\circ} 45'$  East, 40.16 chains to a station in the center of a small creek, thence South 5.77 chains to the land of John McClish; thence West on said McClish's north line, 40.11 chains to section line; thence North on section line 5.54 chains to the point of beginning.

(110-070-026-000)

Case 8:20-bk-13014-ES	Doc 309	Filed 04/06/22	Entered 04/06/22 14:21:13	Desc
	Main Document		Page 52 of 83	
Case 8:20-bk-13014-MW	Doc 264	Filed 12/20/21	Entered 12/20/21 18:03:15	Desc
	Main Document		Page 38 of 44	

## **EXHIBIT 2**



**MARSHACK HAYS** LLP  
ATTORNEYS AT LAW | LITIGATION | REORGANIZATION | BANKRUPTCY

Richard A. Marshack  
D. Edward Hays  
Chad V. Haes  
David A. Wood  
Judith E. Marshack  
Laila Masud  
Tinho Mang  
Bradford N. Barnhardt

*Of Counsel*

Kristine A. Thagard  
Matthew W. Grimshaw

Reference No. 1015-146  
Sender: Tinho Mang on behalf of Richard A.  
Marshack

December 10, 2021

*VIA E-MAIL AND OVERNIGHT MAIL ONLY*

Reed Waddell, Esq.  
Michael Gomez, Esq.  
Frandzel Robins Bloom & Csato, L.C.  
1000 Wilshire Boulevard, Nineteenth Floor  
Los Angeles, CA 90017  
rwaddell@frandzel.com

Re: *In re Northern Holding, LLC*  
Case No. 8:20-bk-13014-MW  
**Letter Agreement re: Access to Paso Robles Properties and  
Maintenance of Collateral**

To Whom It May Concern:

I am the duly-appointed and acting Chapter 7 Trustee (the "Trustee") for the Bankruptcy Estate ("Estate") of Northern Holding, LLC ("Debtor"), which is the owner of record of the real properties commonly known as (1) 2380 Live Oak Road, Paso Robles, CA ("Live Oak Property"); (2) 1172 San Marcos Road, Paso Robles, CA ("San Marcos Property"); and (3) adjacent real property commonly known as the "Texas Road" property. Together, these three real properties shall be referred to as the "Properties."

On November 22, 2021, I transmitted a letter to Farm Credit West, FLCA ("FCW") regarding my immediate authorization to FCW to take all actions to secure the Properties, including re-keying all access doors, at FCW's sole expense, pursuant to and subject to my ability to, on behalf of the Estate, assume possession and control of the Properties at any time.

**MARSHACK HAYS** LLP | www.marshackhays.com  
870 Roosevelt | Irvine, CA 92620 | 949.333.7777 | Fax 949.333.7778

EXHIBIT 2, PAGE 37  
EXHIBIT 1, PAGE 51

December 10, 2021

Page 2

On November 29, 2021, my field agent Lori Ensley met with FCW's authorized representative Jacob Bingham and conducted a joint inspection of the Properties. No significant issues were identified as a result of this joint inspection, other than that FCW requested that I immediately remove all personnel from the Properties. As for collateral on the Properties, FCW did not identify any item of collateral which was not present during the inspection on November 29, 2021.

On December 6, 2021, I signed a Subordination Stipulation with Farm Credit West, FCLA ("FCW"), which includes provisions stating that I am required to deliver "full possession" of the Properties and "other remaining collateral of FCW (e.g., equipment and inventory)" to FCW as a precondition to certain terms of the stipulation.

On December 7, 2021, a letter agreement was transmitted to counsel for FCW regarding the Trustee's intention relating to the possession of the Properties. Subsequently, FCW requested that access to the Properties be transferred to FCW starting on December 9, 2021 at 1:00 p.m., and arrangements were made.

On December 9-10, 2021, my field agent Lori Ensley accompanied FCW's authorized representatives and a locksmith at the Properties, where all occupants or persons on the Properties were instructed to voluntarily leave, and full control of all access doors and gates was assumed by FCW as of 12:34 p.m. on December 10, 2021, with no current occupants at any Properties.

As defined in the Subordination Stipulation, "full possession" of the Properties has been delivered by me and control of the Properties has been assumed by FCW, subject to my ability and authority to retake possession and control of the Properties at any time. All personal property of Northern Holding, LLC located on the Properties at the time of transferring access to FCW's representative is now deemed delivered to FCW as other remaining collateral, subject to my ability to retake possession and control of any and all Estate property at any time. On the other hand, any personal property or assets which are not the property of the Estate (such as, for example, any personal effects of any prior occupant of the Properties or personal effects of any workers on the Properties) should be released to the possession of such persons upon request, except where FCW claims a valid, perfected security interest in such assets. FCW shall not unreasonably withhold access to the Properties solely for the purpose of allowing third parties to retrieve their personal effects from the Properties under supervision by FCW's designated representative(s) and/or the Trustee's representative, if necessary.


December 10, 2021  
Page 3

All property located on the Properties as of 12:34 p.m. on December 10, 2021 is now deemed the management and financial responsibility of FCW, including any necessary and advisable measures to preserve, maintain, manage, and secure the real properties or personal property located thereon, subject to my authority to retake possession and control of the Properties at any time. This includes any preservation or maintenance requested by Anthony Riboli, whose purchase of the Live Oak Property benefits principally FCW. Mr. Riboli has been encouraged to directly contact FCW's representatives to discuss any property maintenance procedures which he requests or requires in order to proceed with his purchase of the Live Oak Property. No acts outside the ordinary course of business shall be permitted absent prior written notice to myself, with a copy to my counsel. As previously stated, no breach of the peace shall be caused by FCW's supervision of the Properties and no use of force is authorized on the Properties.

FCW agrees that Trustee, Trustee's real estate agents or designee, and field agent Lori Ensley or her designee shall have full, reasonable access to the Properties and a full set of keys, passcodes, and combinations. LeRoy Coddling and his business associates and affiliates are expressly forbidden from obtaining any method of access to the Properties except solely as necessary to retrieve any personal effects from the Properties under the supervision of either FCW or the Trustee's representatives. Trustee shall seek approval of this agreement concurrent with seeking approval of the Subordination Stipulation.

If you have any questions or concerns, please contact trustee's counsel Tinho Mang at 949-333-7777.

Very truly yours,



RICHARD A. MARSHACK  
Chapter 7 Trustee

SO AGREED TO THE ABOVE – FCW ACKNOWLEDGES THAT FULL ACCESS  
(SUBJECT TO TRUSTEE'S ABILITY TO RETAKE POSSESSION AND CONTROL)  
HAS BEEN DELIVERED TO FCW IN ACCORDANCE WITH THE TERMS OF THE  
SUBORDINATION STIPULATION:

By:

  
KEVIN RALPH

Authorized Representative for Farm Credit West, FCLA

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
870 Roosevelt, Irvine, CA 92620

A true and correct copy of the foregoing document entitled: **CHAPTER 7 TRUSTEE'S MOTION TO APPROVE COMPROMISE AND SUBORDINATION AGREEMENT WITH FARM CREDIT WEST, FCLA, RE: DISTRIBUTION OF PROCEEDS FOR SALE OF REAL PROPERTY COLLATERAL, WAIVER OF SURCHARGE CLAIMS FOR CONSIDERATION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF RICHARD A. MARSHACK IN SUPPORT; AND REQUEST FOR JUDICIAL NOTICE** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **December 20, 2021**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:** On **December 20, 2021**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

**DEBTOR**

NORTHERN HOLDING, LLC  
ATTN: OFFICER, A MANAGING OR GENERAL AGENT,  
OR TO ANY OTHER AGENT AUTHORIZED BY  
APPOINTMENT OR LAW TO RECEIVE SERVICE  
13217 JAMBOREE RD #429  
TUSTIN, CA 92782

**U.S. TRUSTEE**

UNITED STATES TRUSTEE (SA)  
411 W FOURTH ST., SUITE 7160  
SANTA ANA, CA 92701-4593

☒ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL:** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **December 20, 2021**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

**VIA PERSONAL DELIVERY**

**PRESIDING JUDGE'S COPY**

HONORABLE MARK S. WALLACE  
UNITED STATES BANKRUPTCY COURT, CENTRAL DISTRICT OF CALIFORNIA  
RONALD REAGAN FEDERAL BUILDING AND COURTHOUSE  
411 WEST FOURTH STREET, SUITE 6135 / COURTROOM 6C  
SANTA ANA, CA 92701-4593

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

December 20, 2021  
Date

Layla Buchanan  
Printed Name

/s/ Layla Buchanan  
Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): CONTINUED:**

- **INTERESTED PARTY COURTESY NEF:** William H Brownstein Brownsteinlaw.bill@gmail.com
- **INTERESTED PARTY COURTESY NEF:** Steve Burnell sburnell@sulmeyerlaw.com, sburnell@ecf.courtdrive.com; sburnell@ecf.inforuptcy.com; mviramontes@sulmeyerlaw.com
- **ATTORNEY FOR U.S. TRUSTEE (SA):** Nancy S Goldenberg nancy.goldenberg@usdoj.gov
- **ATTORNEY FOR CREDITOR FARM CREDIT WEST, FLCA:** Michael J Gomez mgomez@frandzel.com, dmoore@frandzel.com
- **ATTORNEY FOR TRUSTEE RICHARD A MARSHACK (TR):** D Edward Hays ehays@marshackhays.com, ehays@ecf.courtdrive.com; kfrederick@ecf.courtdrive.com; cmendoza@marshackhays.com; cmendoza@ecf.courtdrive.com
- **ATTORNEY FOR RESPONDENTS ERICH RUSSELL AND JOANNE RUSSELL:** Kari L Ley Ley1238@att.net
- **ATTORNEY FOR TRUSTEE RICHARD A MARSHACK (TR):** Tinho Mang tmang@marshackhays.com, tmang@ecf.courtdrive.com; kfrederick@ecf.courtdrive.com; cmendoza@ecf.courtdrive.com
- **TRUSTEE RICHARD A MARSHACK (TR):** Richard A Marshack (TR) pkraus@marshackhays.com, rmarshack@iq7technology.com; ecf.alert+Marshack@titledxi.com
- **ATTORNEY FOR INTERESTED PARTY BANK DIRECT CAPITAL FINANCE:** Elissa Miller emiller@sulmeyerlaw.com, emillersk@ecf.inforuptcy.com; ccaldwell@sulmeyerlaw.com
- **ATTORNEY FOR DEBTOR NORTHERN HOLDING LLC:** Roksana D. Moradi-Brovia roksana@rhmfirm.com, matt@rhmfirm.com; janita@rhmfirm.com; susie@rhmfirm.com; max@rhmfirm.com; priscilla@rhmfirm.com; pardis@rhmfirm.com; russ@rhmfirm.com; rebecca@rhmfirm.com; david@rhmfirm.com; sloan@rhmfirm.com
- **ATTORNEY FOR CREDITOR ADLER BELMONT GROUP, INC.:** Paul F Ready tamara@farmerandready.com
- **ATTORNEY FOR DEBTOR NORTHERN HOLDING LLC:** Matthew D. Resnik matt@rhmfirm.com, roksana@rhmfirm.com; janita@rhmfirm.com; susie@rhmfirm.com; max@rhmfirm.com; priscilla@rhmfirm.com; pardis@rhmfirm.com; russ@rhmfirm.com; rebecca@rhmfirm.com; david@rhmfirm.com; sloan@rhmfirm.com
- **ATTORNEY FOR INTERESTED PARTY RIBOLI PASO ROBLES, LLC:** Victor A Sahn vsahn@sulmeyerlaw.com, pdillamar@sulmeyerlaw.com; pdillamar@ecf.inforuptcy.com; vsahn@ecf.inforuptcy.com; cblair@sulmeyerlaw.com; cblair@ecf.inforuptcy.com
- **ATTORNEY FOR TRUSTEE RICHARD A MARSHACK (TR):** Kristine A Thagard kthagard@marshackhays.com, kthagard@ecf.courtdrive.com; kfrederick@ecf.courtdrive.com
- **UNITED STATES TRUSTEE (SA):** United States Trustee (SA) ustprejon16.sa.ecf@usdoj.gov
- **ATTORNEY FOR CREDITOR FARM CREDIT WEST, FLCA:** Reed S Waddell rwaddell@frandzel.com, sking@frandzel.com
- **ATTORNEY FOR CREDITOR FARM CREDIT WEST, FLCA:** Gerrick Warrington gwarrington@frandzel.com, sking@frandzel.com
- **INTERESTED PARTY COURTESY NEF:** David Wood dwood@marshackhays.com, dwood@ecf.courtdrive.com; lbuchananmh@ecf.courtdrive.com; kfrederick@ecf.courtdrive.com

**2. SERVED BY UNITED STATES MAIL: CONTINUED:**

**SECURED CREDITOR / POC ADDRESS**

ELRICHS RUSSELL  
C/O KARI L. LEY, ATTORNEY AT  
LAW  
264 CLOVIS AVENUE, SUITE 208  
CLOVIS, CA 93612

**SECURED CREDITOR / POC ADDRESS**

ERICH RUSSELL  
2380 LIVE OAK ROAD  
PASO ROBLES, CA 93446-9693

**SECURED CREDITOR**

FARM CREDIT WEST  
ATTN: OFFICER, A MANAGING OR  
GENERAL AGENT, OR TO ANY  
OTHER AGENT AUTHORIZED BY  
APPOINTMENT OR LAW TO  
RECEIVE SERVICE  
3755 ATHERTON RD  
11707 FAIR OAKS BLVD  
ROCKLIN, CA 95765

**SECURED CREDITOR / POC**

**ADDRESS**

FARM CREDIT WEST, FLCA  
C/O MICHAEL J. GOMEZ  
FRANDZEL ROBINS BLOOM &  
CSATO, L.C.  
1000 WILSHIRE BOULEVARD,  
19TH FLOOR  
LOS ANGELES, CA 90017-2457

**SECURED CREDITOR / POC ADDRESS**

FARM CREDIT WEST, FLCA  
ATTN: KEVIN E. RALPH  
3755 ATHERTON DRIVE  
ROCKLIN CA 95765-3701

**SECURED CREDITOR / POC**

**ADDRESS**

JAMES W. HAMILTON ACTTC  
SAN LUIS OBISPO TAX COLLECTOR  
1055 MONTEREY STREET  
SUITE D-290  
SAN LUIS OBISPO CA 93408-1003

**SECURED CREDITOR**

MORTGAGE LENDER SERVICES  
AS AGENT  
FARM CREDIT WEST, FLCA, AS  
TRUSTEE  
ATTN: OFFICER, A MANAGING OR  
GENERAL AGENT, OR TO ANY  
OTHER AGENT AUTHORIZED BY  
APPOINTMENT OR LAW TO  
RECEIVE SERVICE  
11707 FAIR OAKS BLVD  
FAIR OAKS, CA 95628-2816



1 D. EDWARD HAYS, #162507  
ehays@marshackhays.com  
2 DAVID A. WOOD, #272406  
dwood@marshackhays.com  
3 TINHO MANG, #322146  
tmang@marshackhays.com  
4 MARSHACK HAYS LLP  
870 Roosevelt Avenue  
5 Irvine, CA 92620  
Telephone: (949) 333-7777  
6 Facsimile: (949) 333-7778

7 Attorneys for Chapter 7 Trustee,  
RICHARD A. MARSHACK  
8

9 UNITED STATES BANKRUPTCY COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 SANTA ANA DIVISION  
12

13 In re  
14 NORTHERN HOLDING, LLC,  
15 Debtor.  
16  
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22  
23

Case No. 8:20-bk-13014-MW

Chapter 7

ORDER GRANTING CHAPTER 7  
TRUSTEE'S MOTION TO APPROVE  
COMPROMISE AND SUBORDINATION  
AGREEMENT WITH FARM CREDIT  
WEST, FCLA, RE: DISTRIBUTION OF  
PROCEEDS FOR SALE OF REAL  
PROPERTY COLLATERAL, WAIVER OF  
SURCHARGE CLAIMS FOR  
CONSIDERATION

Hearing Date

Date: January 10, 2022

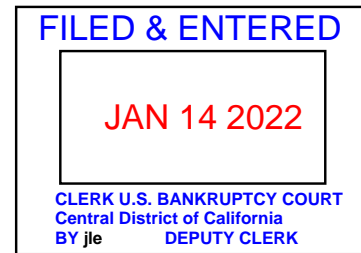
Time: 2:00 p.m.

Ctrm: 6C

Location: United States Bankruptcy Court  
411 West Fourth Street  
Santa Ana, CA 92701-4593

24 On December 13, 2021, the Court conducted a hearing on the motion<sup>1</sup> filed by Richard A.  
25 Marshack, the Chapter 7 Trustee ("Trustee") of the Bankruptcy Estate of Northern Holding, LLC, on  
26

27  
28 <sup>1</sup> All terms not otherwise defined in this order shall have the meaning ascribed to them in the  
Motion.





1 December 20, 2021, as Dk. No. 264, entitled "Chapter 7 Trustee's Motion to Approve Compromise  
2 and Subordination Agreement with Farm Credit West, FCLA, Re: Distribution of Proceeds for Sale  
3 of Real Property Collateral, Waiver of Surcharge Claims for Consideration" ("Motion"). No  
4 opposition was filed. At the hearing, Tinho Mang appeared on behalf of the Trustee. Michael Gomez  
5 appeared on behalf of Farm Credit West, FCLA. No party contested the tentative ruling.

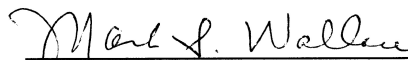
6 For the reasons stated in the Motion and on the record, the Court finds good cause to grant  
7 the Motion, and the Court enters its Order as follows:

8 IT IS ORDERED:

- 9 1. The Motion is granted in its entirety;  
10 2. The Agreement attached as Exhibit "1" to the Motion is approved;  
11 3. The Letter Agreement attached as Exhibit "2" to the Motion is approved;  
12 4. The Trustee is authorized to execute the Agreement and implement its terms,  
13 including to distribute funds from a future sale of any of the Properties in accordance with the terms  
14 of the Agreement.  
15 5. The Trustee may file and serve a motion to sell property pursuant to the Motion with  
16 a hearing on February 9, 2022 at 2:00 p.m.

17 ###  
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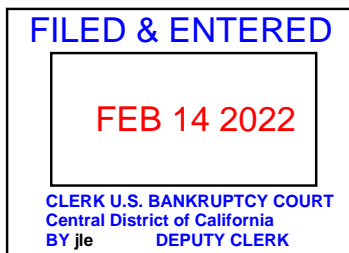
23 Date: January 14, 2022

24   
Mark S. Wallace  
United States Bankruptcy Judge  
25  
26  
27  
28



1 D. EDWARD HAYS, #162507  
ehays@marshackhays.com  
2 KRISTINE A. THAGARD, #094401  
kthagard@marshackhays.com  
3 TINHO MANG, #322146  
tmang@marshackhays.com  
4 MARSHACK HAYS LLP  
870 Roosevelt Avenue  
5 Irvine, CA 92620  
Telephone: (949) 333-7777  
6 Facsimile: (949) 333-7778

7 Attorneys for Chapter 7 Trustee,  
RICHARD A. MARSHACK  
8



9 UNITED STATES BANKRUPTCY COURT  
10 CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION  
11

12 In re

13 NORTHERN HOLDING, LLC,

14 Debtor.  
15  
16  
17  
18

Case No. 8:20-bk-13014-MW

Chapter 7

ORDER APPROVING STIPULATION  
BETWEEN CHAPTER 7 TRUSTEE AND  
SECURED CREDITOR FARM CREDIT  
WEST, FCLA RE: VOLUNTARY  
SUBORDINATION OF LIEN FOR SALE  
OF 2380 LIVE OAK ROAD, PASO  
ROBLES, CA

[NO HEARING REQUIRED]

19  
20 The Court having reviewed and considered the stipulation (“Stipulation”<sup>1</sup>) entered into  
21 between Richard A. Marshack, in his capacity as Chapter 7 Trustee (“Trustee”) of the Bankruptcy  
22 Estate (“Estate”) of Northern Holding, LLC (“Debtor”), and Farm Credit West, FCLA (“FCW”),  
23 with regard to the preliminary exploration and negotiation of property taxes owed to the County of  
24 San Luis Obispo (“SLO County”), filed on January 31, 2022, as Dk. No. 284, and good cause  
25 appearing,  
26  
27  
28

<sup>1</sup> All terms not defined herein are used as they are defined in the Stipulation.

1 IT IS ORDERED:

2 1. The Stipulation is approved.

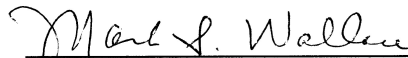
3 2. Trustee and his professionals are authorized to commence an initial investigation into  
4 negotiating and exploring the taxes owed to SLO County for the San Marcos Property, including  
5 providing a written report to FCW regarding the analysis of the issues.

6 3. With the consent of FCW, Trustee may pay up to \$6,000.00 in professional fees for  
7 investigations into tax issues, out of escrow from a sale of the Live Oak Property (if a sale of the  
8 Live Oak Property is consummated), or out of FCW's portion of proceeds for the sale of crop  
9 constituting FCW's cash collateral.

10 4. The payment(s) in the Stipulation are in addition to, and a supplement to, all  
11 payments made on account of the Subordination Stipulation.

12 # # #  
13  
14  
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19  
20  
21  
22

23 Date: February 14, 2022

24   
Mark S. Wallace  
United States Bankruptcy Judge



1 KRISTINE A. THAGARD, #94401  
kthagard@marshackhays.com  
2 TINHO MANG, #322146  
tmang@marshackhays.com  
3 MARSHACK HAYS LLP  
870 Roosevelt  
4 Irvine, California 92620  
Telephone: (949) 333-7777  
5 Facsimile: (949) 333-7778

6 Attorneys for Chapter 7 Trustee,  
RICHARD A. MARSHACK

FILED & ENTERED

MAR 04 2022

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
BY duarte DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION

10 In re  
11 NORTHERN HOLDING, LLC,  
12 Debtor.

Case No. 8:20-bk-13014-ES

Chapter 7

ORDER GRANTING CHAPTER 7  
TRUSTEE'S MOTION FOR ORDER (1)  
AUTHORIZING SALE OF REAL  
PROPERTY LOCATED AT 2380 LIVE  
OAK ROAD, PASO ROBLES, CA: (A)  
OUTSIDE THE ORDINARY COURSE OF  
BUSINESS; (B) FREE AND CLEAR OF  
LIENS, CLAIMS, AND  
ENCUMBRANCES; (C) SUBJECT TO  
OVERBID; (D) FOR DETERMINATION  
OF GOOD FAITH PURCHASER UNDER  
11 U.S.C. §363(M); AND (2)  
AUTHORIZING AMENDMENT TO  
PURCHASE AND SALE AGREEMENT

▪ EXHIBIT ATTACHED  
(SIGNATURES PAGE)

Date: February 9, 2022<sup>1</sup>  
Time: 2:00 p.m.  
Ctm: 6C  
Location: United States Bankruptcy Court  
411 West Fourth Street  
Santa Ana, CA 92701-4593

<sup>1</sup> Hearing Date specially set with permission.

On February 9, 2022, at 2:00 p.m., the Court held a hearing on the motion filed by Richard A. Marshack, the duly appointed and acting chapter 7 trustee (“Trustee”)<sup>2</sup> for the bankruptcy estate (“Estate”) of Northern Holding, LLC (“Debtor”), entitled “*Chapter 7 Trustee’s Motion for Order (1) Authorizing Sale of Real Property Located at 2380 Live Oak Road, Paso Robles, CA (A) Outside The Ordinary Course Of Business; (B) Free And Clear Of Liens and Encumbrances; (C) Subject to Overbids; and (D) For Determination of Good Faith Purchasers Under § 363(M; and (2) Authorizing Amendment to Purchase and Sale Agreement*” filed on January 19, 2022, as docket number 278 (“Motion”). Appearances were as noted on the record.

On October 20, 2021, as Dk. No. 238, the Court entered an order granting the Bid Procedure Motion. At the hearing on the Motion, the Court inquired if there were any overbidders. The Court hearing no overbids regarding the real property commonly known as 2380 Live Oak Road, Paso Robles, CA (“Live Oak Property” or “Property”) confirmed that Riboli Paso Robles, LLC (“Buyer”) was the successful bidder at the price of \$9,100,000.

The Property is legally described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 27 SOUTH, RANGE 11 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

PARCEL 1A:

AN EASEMENT FOR UTILITY PURPOSES BEGINNING AT LIVE OAK ROAD AND EXTENDING NORTH OVER THE EAST 10.00 FEET ON THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 27 SOUTH, RANGE 11 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

PARCEL 1B:

AN EASEMENT TO PROVIDE INGRESS, EGRESS, PUBLIC UTILITIES AND INCIDENTAL PURPOSES TO THE SOUTHWEST 1/4 OF THE NORTHEAST ¼ AND

<sup>2</sup> All terms not otherwise defined herein are used as they are defined in the Motion.

1 THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 12,  
2 TOWNSHIP 27 SOUTH, RANGE 11 EAST, MOUNT DIABLO BASE AND MERIDIAN,  
3 OVER, UNDER AND UPON A STRIP OF LAND 30.00 FEET WIDE LOCATED IN THE  
4 SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 27 SOUTH, RANGE 11 EAST, MOUNT  
DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF,  
AND LYING EQUALLY ON EACH SIDE OF THE FOLLOWING DESCRIBED  
CENTERLINE:

5  
6 BEGINNING AT THE EAST 1/4 CORNER OF SAID SECTION 12, SAID CORNER  
BEING SHOWN AS A 1/2 INCH REBAR CAPPED RCE 14994 IN BOOK 1 PAGE 159  
7 OF OFFICIAL RECORDS; THENCE ALONG THE NORTHERLY LINE OF THE  
SOUTHEAST 1/4 OF SAID SECTION 12, SOUTH 89°29'51" WEST, 1,393.11 FEET,  
8 MORE OR LESS, TO THE SOUTHWEST CORNER OF THE SOUTHEAST 1/4 OF THE  
NORTHEAST 1/4 OF SAID SECTION 12 AND THE TRUE POINT OF BEGINNING;  
9 THENCE LEAVING SAID NORTHERLY LINE SOUTH 20°22'08" WEST, 701.76 FEET  
TO A POINT WHICH BEARS SOUTH 70°16' EAST, 17.00 FEET FROM THE CENTER  
10 OF A 48 INCH LIVE OAK TREE; THENCE SOUTH 10°30'20" WEST, 341.71 FEET TO  
A POINT WHICH BEARS SOUTH 79°29' EAST, 15.00 FEET FROM THE CENTER OF A  
11 CATTLE GUARD; THENCE SOUTH 79°29' EAST, TO THE CENTER OF LIVE OAK  
12 ROAD (COUNTY ROAD NO, M5262).

13 THE SIDE LINES OF THE ABOVE MENTIONED 30.00 FOOT STRIP SHALL BE  
14 LENGTHENED AND SHORTENED TO MEET THE BEGINNING AND ENDING  
BOUNDARY LINES.

15 APN: 026-342-039

16  
17 Based on the evidence submitted in support of the Motion, the Court determines that the  
18 Property was subjected to a thorough and commercially reasonable marketing process, and  
19 \$9,100,000 represents a reasonable and fair market value for the purchase of the Property.

20 After consideration of the Motion, the declarations and exhibits in support of the Motion, the  
21 conditional opposition to the Motion filed by Farm Credit West, FCLA ("FCW"), and the arguments  
22 of counsel at the hearing, the Court finds that it has jurisdiction to enter this order, and finds good  
23 cause to grant the Motion for the reasons set forth in the Motion and on the record during the  
24 hearing. Based on the proof of service of the Motion, and the declaratory evidence attached to the  
25 Motion, the Court finds that service of the Motion and notice of the Motion was adequate and  
26 proper. The Court incorporates its findings of fact and conclusions of law filed as Docket No. **291**  
27 and accordingly, the Court ORDERS as follows:

- 28 1. The Motion is granted;



2. No party other than FCW, which has conditionally consented to the sale, having appeared or presented any evidence to the contrary pursuant to 11 U.S.C. § 363(p)(2), the Live Oak Property is property of the Estate which may be sold and administered by Trustee;

3. Trustee is authorized to sell the Live Oak Property pursuant to 11 U.S.C. § 363 and is further authorized to pay from escrow, pursuant to demands submitted to escrow, all liens and encumbrances to the extent provided for in the Motion, including specifically all charges and costs agreed by FCW to be paid in exchange for a release of the Live Oak Property as collateral from FCW DOT 1 (Recording No.<sup>3</sup> 2007-19418) and FCW DOT 2 (Recording No. 2009-5727), which liens shall be paid to the extent of the agreement between FCW and Trustee;

4. Trustee is authorized to sign all documents necessary to consummate the sale and close escrow, including, but not limited to, the purchase and sale agreement, grant deed and escrow instructions, and any amendments;

5. Trustee is authorized to make distributions from the sale of the Live Oak Property in accordance with the stipulated terms with FCW, including that:

- a. Trustee is authorized to pay all customary costs of sale;
- b. Trustee is authorized to pay all property taxes incurred on account of the Live Oak Property out of escrow, to be divided between buyer and seller according to the customary practices for the purchase of similarly situated real property;
- c. Trustee is authorized to pay a broker's commission equal to 1.75% of the sale price out of escrow to Onyx;
- d. Trustee is authorized to pay a broker's commission equal to 1.75% of the sale price out of escrow to Hilco;
- e. Trustee is authorized to receive the reduced compensation equal to 2.25% of the purchase price out of escrow, to be held pending further order;
- f. Trustee is authorized to receive \$100,000 out of escrow and hold such amount for the purpose of paying attorneys' fees;

<sup>3</sup> All recording numbers herein shall refer to documents recorded with the San Luis Obispo County Recorder's Office.

- 1 g. Trustee is authorized to receive \$6,770.78 out of escrow for the Estate as a  
2 reimbursement for insurance premiums advanced on behalf of the Estate,  
3 once the Trustee submits evidence satisfactory to FCW that this cost was paid  
4 for the Estate;
- 5 h. Trustee is authorized to receive \$15,000 out of escrow for the Estate as a  
6 further reserve for future insurance costs, and may return such funds (if  
7 unused) to FCW without further order of the Court;
- 8 i. Trustee is authorized to receive and hold \$30,000 out of escrow for the Estate  
9 as a miscellaneous contribution;
- 10 j. Trustee is authorized to receive \$12,000 out of escrow for the purpose of  
11 paying the fees and expenses of Lori Ensley, his field agent;
- 12 k. Pursuant to the Stipulation filed as Docket No. 284 and express consent by  
13 FCW, Trustee is further authorized to receive and hold \$6,000 for the purpose  
14 of paying attorneys' fees for the initial investigation into reducing property  
15 tax liabilities for the San Marcos Property, but such funds will be  
16 immediately disbursed by the Trustee to FCW should FCW foreclose on the  
17 Property, as set forth in the Stipulation; and
- 18 l. Trustee is authorized to disburse all remaining funds out of escrow to FCW on  
19 account of its secured claim, and may adjust and reduce in his business  
20 discretion any line item above to ensure that FCW receives no less than  
21 \$8,250,000 out of escrow;

22 6. The sale is in the best interest of the Estate, and the final bid price in the amount of  
23 \$9,100,000 is a fair market price for the Live Oak Property;

24 7. Satisfactory declaratory evidence having been provided to the Court of good faith and  
25 lack of collusion, Buyer is a good faith purchaser entitled to protection under 11 U.S.C. § 363(m);  
26  
27  
28

1           8.       Except as set forth below in paragraphs 9 through 12, the Property is sold free and  
2 clear of all liens, claims, and interests of any creditor which consents to the sale pursuant to 11  
3 U.S.C. § 363(f)(2);

4           9.       The Property is sold free and clear of FCW DOT 1 recorded as document no.  
5 2007-19418, pursuant to 11 U.S.C. § 363(f)(2), upon payment out of escrow to FCW in satisfaction  
6 of the agreed-upon provisions in Paragraph 5;

7           10.      The Property is sold free and clear of FCW DOT 2 recorded as document no.  
8 2009-5727, pursuant to 11 U.S.C. § 363(f), upon payment out of escrow to FCW in satisfaction of  
9 the agreed-upon provisions in Paragraph 5;

10          11.      The Property is sold free and clear of FCW DOT 3 recorded as document no.  
11 2010-11915, pursuant to 11 U.S.C. § 363(f), upon payment out of escrow to FCW in satisfaction of  
12 the agreed-upon provisions in Paragraph 5;

13          12.      The Property is sold free and clear of FCW Advance recorded as document no.  
14 2010-66312, pursuant to 11 U.S.C. § 363(f), upon payment out of escrow to FCW in satisfaction of  
15 the agreed-upon provisions in Paragraph 5;

16          13.      The Property is sold free and clear any interest of Erich Russell and Joanne Russell;

17          14.      The Property is sold free and clear of any interest of any non-Debtor third party  
18 arising from the Agreement To Purchase and Sell a Corporation and Real Estate, recorded as  
19 document no. 2020-61134;

20          15.      The Property is sold free and clear of any interest of any non-Debtor third party  
21 arising from the Assumption and Assignment Agreement, recorded as document no. 2020-61135;

22          16.      The Property is sold free and clear of any interest of any non-Debtor third party  
23 arising from the Assumption and Assignment Agreement, recorded as document no. 2020-61136;

24          17.      The Property is sold free and clear of any claim that the Property is subject to a trust  
25 or lien that might be created under the Perishable Agricultural Commodities Act, 1930, 7 U.S.C.  
26 §§ 499a, et seq. ("PACA");

27

28

1 18. The Property is sold free and clear of any claim that the Property is subject to a trust  
2 or lien that might be created under the Packers and Stockyards Act, 7 U.S.C. §§ 181 *et seq.*, or under  
3 similar state laws;

4 19. The Property is sold free and clear of any rights of any parties in possession of the  
5 Property;

6 20. Except for FCW, the Property is sold free and clear of any interest of any party  
7 receiving notice of the hearing who failed to present any evidence of the validity, priority, and extent  
8 of its claims or liens against the Property, including but not limited to LeRoy E. Coddling IV, Rabbit  
9 Ridge Wine Sales, Inc., and any affiliates, principals, employees, or subsidiaries of LeRoy E.  
10 Coddling IV or Rabbit Ridge Wine Sales, Inc.;

11 21. The Motion is granted and the Purchase and Sale Agreement and Escrow Instructions,  
12 including addendums and amendments attached to the Motion as **Exhibits “1” and “2”** are  
13 approved, and Trustee is authorized to execute the PSA, its exhibits and any further necessary  
14 amendments thereto;


15 22. The sale of the Property shall be “as-is” and “where-is” with all faults and without  
16 warranty, representation, or recourse whatsoever;

17 23. The 14-day stay regarding the effectiveness of the order is waived; and

18 24. This Court retains jurisdiction: (a) to interpret, enforce, and implement the terms and  
19 provisions of this sale; and (b) to resolve any disputes arising under or related to this order.

20 ###

21  
22  
23 Date: March 4, 2022

  
Erithe Smith  
United States Bankruptcy Judge

1 SIGNATURE PAGE TO ORDER GRANTING CHAPTER 7 TRUSTEE'S MOTION FOR ORDER  
2 (1) AUTHORIZING SALE OF REAL PROPERTY LOCATED AT 2380 LIVE OAK ROAD,  
3 PASO ROBLES, CA: (A) OUTSIDE THE ORDINARY COURSE OF BUSINESS; (B) FREE AND  
4 CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES; (C) SUBJECT TO OVERBID; (D) FOR  
5 DETERMINATION OF GOOD FAITH PURCHASER UNDER 11 U.S.C. §363(M); AND (2)  
6 AUTHORIZING AMENDMENT TO PURCHASE AND SALE AGREEMENT

7 APPROVED AS TO FORM:

8  
9 FRANDZEL ROBINS BLOOM & CSATO, L.C.

10 

11 \_\_\_\_\_  
12 MICHAEL J. GOMEZ  
13 REED S. WADDELL, Attorneys for  
14 FARM CREDIT WEST, FLCA

15 SULMEYER KUPETZ

16  
17  
18 \_\_\_\_\_  
19 VICTOR A. SAHN  
20 STEVE BURNELL, Attorneys for  
21 RIBOLI PASO ROBLES, LLC


1 SIGNATURE PAGE TO ORDER GRANTING CHAPTER 7 TRUSTEE'S MOTION FOR ORDER  
2 (1) AUTHORIZING SALE OF REAL PROPERTY LOCATED AT 2380 LIVE OAK ROAD,  
3 PASO ROBLES, CA: (A) OUTSIDE THE ORDINARY COURSE OF BUSINESS; (B) FREE AND  
4 CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES; (C) SUBJECT TO OVERBID; (D) FOR  
5 DETERMINATION OF GOOD FAITH PURCHASER UNDER 11 U.S.C. §363(M); AND (2)  
6 AUTHORIZING AMENDMENT TO PURCHASE AND SALE AGREEMENT  
7

8 APPROVED AS TO FORM:

9 FRANDZEL ROBINS BLOOM & CSATO, L.C.  
10

11  
12 MICHAEL J. GOMEZ  
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14 FARM CREDIT WEST, FLCA

15 SULMEYER KUPETZ  
16

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18 VICTOR A. SAHN  
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20 RIBOLI PASO ROBLES, LLC  
21  
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2 (1) AUTHORIZING SALE OF REAL PROPERTY LOCATED AT 2380 LIVE OAK ROAD,  
3 PASO ROBLES, CA: (A) OUTSIDE THE ORDINARY COURSE OF BUSINESS; (B) FREE AND  
4 CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES; (C) SUBJECT TO OVERBID; (D) FOR  
5 DETERMINATION OF GOOD FAITH PURCHASER UNDER 11 U.S.C. §363(M); AND (2)  
6 AUTHORIZING AMENDMENT TO PURCHASE AND SALE AGREEMENT  
7

8 APPROVED AS TO FORM:

9  
10 FRANDZEL ROBINS BLOOM & CSATO, L.C.

11 *[See Attached Signature Page]*

12 \_\_\_\_\_  
13 MICHAEL J. GOMEZ  
14 REED S. WADDELL, Attorneys for  
15 FARM CREDIT WEST, FLCA

16 SULMEYER KUPETZ

17 *[See Attached Signature Page]*

18 \_\_\_\_\_  
19 VICTOR A. SAHN  
20 STEVE BURNELL, Attorneys for  
21 RIBOLI PASO ROBLES, LLC





RICHARD A. MARSHACK  
rmarshack@marshackhays.com  
MARSHACK HAYS LLP  
870 Roosevelt  
Irvine, California 92620-5749  
Telephone: (949) 333-7777  
Facsimile: (949) 333-7778

Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION

In re  
NORTHERN HOLDING LLC,  
Debtor.

Case No.: 8:20-bk-13014-ES  
Chapter 7  
STATEMENT OF PROPERTY SOLD  
[NO HEARING REQUIRED]

RICHARD A. MARSHACK, in his capacity as Chapter 7 Trustee (“Trustee”) for the  
Bankruptcy Estate of Northern Holding LLC, files this Statement of Property Sold pursuant to FRBP  
6004(f)(1) and LBR 6004-1(g). Pursuant to the Sale Order entered March 4, 2022, Trustee has sold  
the following property of the Estate. A true and correct copy of the escrow closing statement is  
attached.

Asset Sold: Estate’s interest in 2380 Live Oak Road, Paso Robles, California  
Purchaser: Riboli Paso Robles, LLC  
Sale Price: \$9,100,000

Dated: March 17, 2022

Respectfully submitted,

By: /s/ Richard A. Marshack  
RICHARD A. MARSHACK  
Chapter 7 Trustee



ESCROW SERVICES, INC.

415 N. Crescent Drive, Suite 320  
Beverly Hills, CA 90210

Phone: (310) 550-6055  
Fax: (310) 550-6130

### SELLER'S FINAL SETTLEMENT STATEMENT

<b>PROPERTY:</b>	2380 Live Oak Road Paso Robles, CA 93446	<b>DATE:</b>	March 15, 2022
<b>SELLER:</b>	Bankruptcy Estate of Northern Holding, LLC, Bankruptcy case number 8:20-bk- 13014-MW	<b>CLOSING DATE:</b>	March 15, 2022
		<b>ESCROW NO.:</b>	105355-AA

	<u>DEBITS</u>	<u>CREDITS</u>
<b>FINANCIAL CONSIDERATION</b>		
Total Consideration		9,100,000.00
EMD paid to Trustee outside of escrow	273,000.00	
<b>PRORATIONS/ADJUSTMENTS</b>		
2nd 1/2 taxes 2021-2022 at \$18,755.63/semi-annually from 03/15/2022 to 07/01/2022		11,044.98
<b>COMMISSION CHARGES</b>		
Onyx Asset Advisors, LLC	159,250.00	
Hilco Real Estate, LLC	159,250.00	
<b>OTHER DEBITS/CREDITS</b>		
MyNHD, Inc. for NHD Disclosure Report	74.95	
Bankruptcy Estate of Northern Holding, LLC for Trustee 2.25% compensation from funds on deposit with Seller POC (S) \$204,750.00		
Bankruptcy Estate of Northern Holding, LLC to Trustee for hold for Attorney Fees from funds on deposit with Seller POC (S) \$68,250.00	31,750.00	
Bankruptcy Estate of Northern Holding, LLC to Trustee for reimbursement for insurance	6,770.78	
Bankruptcy Estate of Northern Holding, LLC to Trustee for reserve for future insurance costs	15,000.00	
Bankruptcy Estate of Northern Holding, LLC for Estate as miscellaneous contribution	30,000.00	
Bankruptcy Estate of Northern Holding, LLC for payment of fees to Lori Ensley, field agent	12,000.00	
Bankruptcy Estate of Northern Holding, LLC to Trustee to hold for attorney fees to reduce property tax liability	6,000.00	
<b>TITLE/TAXES/RECORDING CHARGES - Fidelity National Title</b>		
Title - Owner's Title Insurance	7,060.00	
Title - Messenger Fee	59.00	
Title - Sub Escrow Fee	62.50	
Recording Sub & Recon	20.00	
Recording Sub & Recon	20.00	
Recording Court Order	41.00	
Transfer Tax - County to San Luis Obispo County	10,010.00	
1st 1/2 Property Taxes 2021-22 +penalty to San Luis Obispo County Tax Collector	20,631.19	
2nd 1/2 Property taxes 2021-22 to San Luis Obispo County Tax	18,755.63	

Date: March 15, 2022

Escrow No.: 105355-AA

Page 2 of 2:

	<u>DEBITS</u>	<u>CREDITS</u>
Collector		
Supplemental taxes 2020-2021 to San Luis Obispo County Tax	5,940.01	
Collector		
Default Taxes 2020 -good to January 2022 to San Luis Obispo	33,690.81	
County Tax Collector		
<b>ESCROW CHARGES - A &amp; A Escrow Services, Inc.</b>		
Title - Escrow Fee	9,100.00	
Title - 1099 Processing Fee to A & A Escrow Services Inc.	75.00	
Title - Drawing Documentation Fee	75.00	
Title - Wire Fee to A & A Escrow Services Inc.	25.00	
Title - Messenger/FedEx Fees to A & A Escrow Services Inc.	45.00	
Title - File Archive Fee* to Archive It!	50.00	
<b>Net Proceeds to Farm Credit West per stipulation</b>	8,312,289.11	
<b>TOTAL</b>	<b>\$ 9,111,044.98</b>	<b>\$ 9,111,044.98</b>

**SAVE THIS STATEMENT FOR INCOME TAX PURPOSES**

Multiple disbursements due to Bankruptcy Estate of Northern Holding, LLC in the total amount of \$374,520.78 per stipulation. Seller received earnest money deposit in the sum of \$273,000.00 outside of escrow. Balance of funds due to Estate in the amount of \$101,520.78 consisting of the following:

Bankruptcy Estate of Northern Holding, LLC for Trustee 2.25% compensation from funds on deposit with Seller POC (S) \$204,750.00	
Bankruptcy Estate of Northern Holding, LLC to Trustee for hold for Attorney Fees from funds on deposit with Seller POC (S) \$68,250.00	31,750.00
Bankruptcy Estate of Northern Holding, LLC to Trustee for reimbursement for insurance	6,770.78
Bankruptcy Estate of Northern Holding, LLC to Trustee for reserve for future insurance costs	15,000.00
Bankruptcy Estate of Northern Holding, LLC for Estate as miscellaneous contribution	30,000.00
Bankruptcy Estate of Northern Holding, LLC for payment of fees to Lori Ensley, field agent	12,000.00
Bankruptcy Estate of Northern Holding, LLC to Trustee to hold for attorney fees to reduce property tax liability	6,000.00

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
870 Roosevelt, Irvine, CA 92620

A true and correct copy of the foregoing document entitled (*specify*): **STATEMENT OF PROPERTY SOLD** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **March 18, 2022**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☐ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:

On **March 18, 2022**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

**DEBTOR**

NORTHERN HOLDING, LLC

ATTN: OFFICER, A MANAGING OR GENERAL AGENT, OR TO ANY OTHER AGENT AUTHORIZED BY  
APPOINTMENT OR LAW TO RECEIVE SERVICE

13217 JAMBOREE RD #429

TUSTIN, CA 92782

☐ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method*

*for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on   , I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

March 18, 2022

Pamela Kraus

*Date*

*Printed Name*

*/s/ Pamela Kraus*

*Signature*

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): continued:**

- **INTERESTED PARTY COURTESY NEF:** William H Brownstein Brownsteinlaw.bill@gmail.com
- **INTERESTED PARTY COURTESY NEF:** Steve Burnell sburnell@sulmeyerlaw.com, sburnell@ecf.courtdrive.com; sburnell@ecf.inforuptcy.com; mviramontes@sulmeyerlaw.com
- **ATTORNEY FOR U.S. TRUSTEE (SA):** Nancy S Goldenberg nancy.goldenberg@usdoj.gov
- **ATTORNEY FOR CREDITOR FARM CREDIT WEST, FLCA:** Michael J Gomez mgomez@frandzel.com, dmoore@frandzel.com
- **ATTORNEY FOR TRUSTEE RICHARD A MARSHACK (TR):** D Edward Hays ehays@marshackhays.com, ehays@ecf.courtdrive.com; kfrederick@ecf.courtdrive.com; cmendoza@marshackhays.com; cmendoza@ecf.courtdrive.com
- **ATTORNEY FOR RESPONDENTS ERICH RUSSELL AND JOANNE RUSSELL:** Kari L Ley Ley1238@att.net
- **ATTORNEY FOR TRUSTEE RICHARD A MARSHACK (TR):** Tinh Mang tmang@marshackhays.com, tmang@ecf.courtdrive.com; kfrederick@ecf.courtdrive.com; cmendoza@ecf.courtdrive.com
- **TRUSTEE RICHARD A MARSHACK (TR):** Richard A Marshack (TR) pkraus@marshackhays.com, rmarshack@iq7technology.com; ecf.alert+Marshack@titledexi.com
- **ATTORNEY FOR INTERESTED PARTY BANK DIRECT CAPITAL FINANCE:** Elissa Miller emiller@sulmeyerlaw.com, emillersk@ecf.inforuptcy.com; ccaldwell@sulmeyerlaw.com
- **ATTORNEY FOR DEBTOR NORTHERN HOLDING LLC:** Roksana D. Moradi-Brovia roksana@rhmfirm.com, matt@rhmfirm.com; janita@rhmfirm.com; susie@rhmfirm.com; max@rhmfirm.com; priscilla@rhmfirm.com; pardis@rhmfirm.com; russ@rhmfirm.com; rebecca@rhmfirm.com; david@rhmfirm.com; sloan@rhmfirm.com
- **ATTORNEY FOR CREDITOR ADLER BELMONT GROUP, INC.:** Paul F Ready tamara@farmerandready.com
- **ATTORNEY FOR DEBTOR NORTHERN HOLDING LLC:** Matthew D. Resnik matt@rhmfirm.com, roksana@rhmfirm.com; janita@rhmfirm.com; susie@rhmfirm.com; max@rhmfirm.com; priscilla@rhmfirm.com; pardis@rhmfirm.com; russ@rhmfirm.com; rebecca@rhmfirm.com; david@rhmfirm.com; sloan@rhmfirm.com
- **ATTORNEY FOR INTERESTED PARTY RIBOLI PASO ROBLES, LLC:** Victor A Sahn vsahn@sulmeyerlaw.com, pdillamar@sulmeyerlaw.com; pdillamar@ecf.inforuptcy.com; vsahn@ecf.inforuptcy.com; cblair@sulmeyerlaw.com; cblair@ecf.inforuptcy.com
- **ATTORNEY FOR TRUSTEE RICHARD A MARSHACK (TR):** Kristine A Thagard kthagard@marshackhays.com, kthagard@ecf.courtdrive.com; kfrederick@ecf.courtdrive.com
- **UNITED STATES TRUSTEE (SA):** United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov
- **ATTORNEY FOR CREDITOR FARM CREDIT WEST, FLCA:** Reed S Waddell rwaddell@frandzel.com, sking@frandzel.com
- **ATTORNEY FOR CREDITOR FARM CREDIT WEST, FLCA:** Gerrick Warrington gwarrington@frandzel.com, sking@frandzel.com
- **INTERESTED PARTY COURTESY NEF:** David Wood dwood@marshackhays.com, dwood@ecf.courtdrive.com; lbuchananmh@ecf.courtdrive.com; kfrederick@ecf.courtdrive.com

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
870 Roosevelt, Irvine, CA 92620

A true and correct copy of the foregoing document entitled: **CHAPTER 7 TRUSTEE'S MOTION TO AUTHORIZE CASH DISBURSEMENTS PURSUANT TO COURT-APPROVED STIPULATION FOR SUBORDINATION RE SALE PROCEEDS OF 2380 LIVE OAK ROAD, PASO ROBLES, CA; DECLARATION OF RICHARD A. MARSHACK; AND REQUEST FOR JUDICIAL NOTICE** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **April 5, 2022**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**: On **April 6, 2022**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

**DEBTOR**

NORTHERN HOLDING, LLC  
ATTN: OFFICER, A MANAGING OR GENERAL AGENT,  
OR TO ANY OTHER AGENT AUTHORIZED BY  
APPOINTMENT OR LAW TO RECEIVE SERVICE  
13217 JAMBOREE RD #429  
TUSTIN, CA 92782

☐ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL**: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **April 6, 2022**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

PURSUANT TO COURTROOM POLICIES AND PROCEDURES OF HONORABLE ERITHE A. SMITH, COURTROOM 5A, § VIII. JUDGES' OR COURTESY COPIES, EXCEPT FOR DOCUMENTS 200 PAGES OR OVER, INCLUDING EXHIBITS, JUDGE SMITH **DOES NOT** REQUIRE JUDGES' COPIES.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

April 6, 2022

Date

Layla Buchanan

Printed Name

/s/ Layla Buchanan

Signature

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** CONTINUED:

- **INTERESTED PARTY COURTESY NEF:** William H Brownstein Brownsteinlaw.bill@gmail.com
- **INTERESTED PARTY COURTESY NEF:** Steve Burnell sburnell@sulmeyerlaw.com, sburnell@ecf.courtdrive.com; sburnell@ecf.inforuptcy.com; mviramontes@sulmeyerlaw.com
- **ATTORNEY FOR INTERESTED PARTY LEE CODDING:** Robert P Goe kmurphy@goeforlaw.com, rgoe@goeforlaw.com; goeforecf@gmail.com
- **ATTORNEY FOR U.S. TRUSTEE (SA):** Nancy S Goldenberg nancy.goldenberg@usdoj.gov
- **ATTORNEY FOR CREDITOR FARM CREDIT WEST, FLCA:** Michael J Gomez mgomez@frandzel.com, dmoore@frandzel.com
- **ATTORNEY FOR TRUSTEE RICHARD A MARSHACK (TR):** D Edward Hays ehays@marshackhays.com, ehays@ecf.courtdrive.com; kfrederick@ecf.courtdrive.com; cmendoza@marshackhays.com; cmendoza@ecf.courtdrive.com
- **ATTORNEY FOR INTERESTED PARTY LEE CODDING:** Brandon J Iskander biskander@goeforlaw.com, kmurphy@goeforlaw.com
- **ATTORNEY FOR RESPONDENTS ERICH RUSSELL AND JOANNE RUSSELL:** Kari L Ley Ley1238@att.net
- **ATTORNEY FOR TRUSTEE RICHARD A MARSHACK (TR):** Tinho Mang tmang@marshackhays.com, tmang@ecf.courtdrive.com; kfrederick@ecf.courtdrive.com; cmendoza@ecf.courtdrive.com
- **TRUSTEE RICHARD A MARSHACK (TR):** Richard A Marshack (TR) pkraus@marshackhays.com, rmarshack@iq7technology.com; ecf.alert+Marshack@titledxi.com
- **ATTORNEY FOR INTERESTED PARTY BANK DIRECT CAPITAL FINANCE:** Elissa Miller emiller@sulmeyerlaw.com, emillersk@ecf.inforuptcy.com; ccaldwell@sulmeyerlaw.com
- **ATTORNEY FOR DEBTOR NORTHERN HOLDING LLC:** Roksana D. Moradi-Brovia roksana@rhmfir.com, matt@rhmfir.com; janita@rhmfir.com; susie@rhmfir.com; max@rhmfir.com; priscilla@rhmfir.com; pardis@rhmfir.com; russ@rhmfir.com; rebecca@rhmfir.com; david@rhmfir.com; sloan@rhmfir.com
- **ATTORNEY FOR CREDITOR ADLER BELMONT GROUP, INC.:** Paul F Ready tamara@farmerandready.com
- **ATTORNEY FOR DEBTOR NORTHERN HOLDING LLC:** Matthew D. Resnik matt@rhmfir.com, roksana@rhmfir.com; janita@rhmfir.com; susie@rhmfir.com; max@rhmfir.com; priscilla@rhmfir.com; pardis@rhmfir.com; russ@rhmfir.com; rebecca@rhmfir.com; david@rhmfir.com; sloan@rhmfir.com
- **ATTORNEY FOR INTERESTED PARTY RIBOLI PASO ROBLES, LLC:** Victor A Sahn vsahn@sulmeyerlaw.com, pdillamar@sulmeyerlaw.com; pdillamar@ecf.inforuptcy.com; vsahn@ecf.inforuptcy.com; cblair@sulmeyerlaw.com; cblair@ecf.inforuptcy.com
- **ATTORNEY FOR TRUSTEE RICHARD A MARSHACK (TR):** Kristine A Thagard kthagard@marshackhays.com, kthagard@ecf.courtdrive.com; kfrederick@ecf.courtdrive.com
- **UNITED STATES TRUSTEE (SA):** United States Trustee (SA) ustpregion16.sa.ecf@usdoj.gov
- **ATTORNEY FOR CREDITOR FARM CREDIT WEST, FLCA:** Reed S Waddell rwaddell@frandzel.com, sking@frandzel.com
- **ATTORNEY FOR CREDITOR FARM CREDIT WEST, FLCA:** Gerrick Warrington gwarrington@frandzel.com, sking@frandzel.com
- **INTERESTED PARTY COURTESY NEF:** David Wood dwood@marshackhays.com, dwood@ecf.courtdrive.com; lbuchananmh@ecf.courtdrive.com; kfrederick@ecf.courtdrive.com